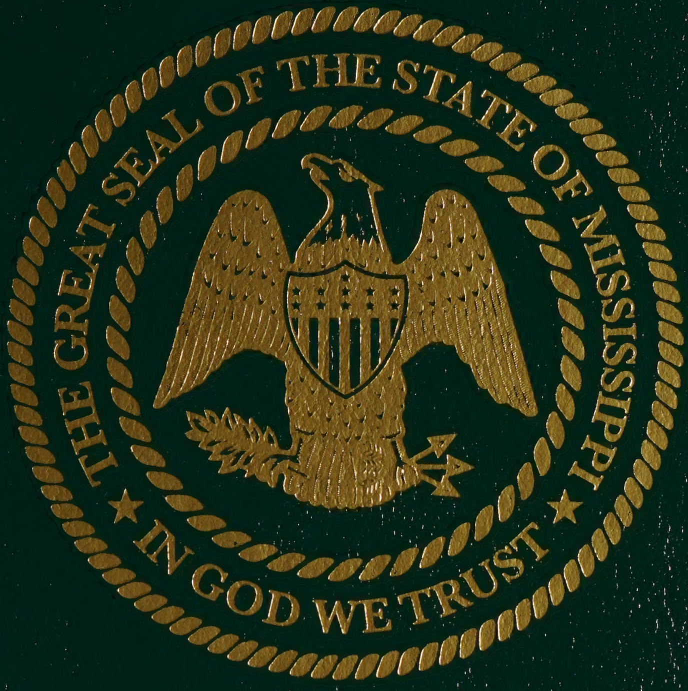

MISSISSIPPI CODE 1972

Annotated

Debtor-Creditor
Relationship
Contracts and Contractual
Relationships
Real and Personal Property
Trusts and Estates

Titles 85 to 91

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME NINETEEN B

DEBTOR-CREDITOR RELATIONSHIP

CONTRACTS AND CONTRACTUAL RELATIONS

REAL AND PERSONAL PROPERTY

TRUSTS AND ESTATES

§§ 85-1-1 to 91-31-25

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2021 REGULAR LEGISLATIVE SESSION

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PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. Summer
Attorney General

PUBLISHER'S FOREWORD

This 2021 Replacement Volume 19B of the Mississippi Code of 1972 Annotated represents material appearing in the original 1973 bound volume 19, the 1991 Replacement Volume 19, the 1999 Replacement Volume 19A, the 2011 Replacement Volume 19B, and the 2018 Replacement Volume 20 as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2021 Regular Legislative Session.

This volume contains the full text of Titles 85 through 91, of the Mississippi Code of 1972 Annotated, as amended through the 2021 Regular Legislative Session.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 4th Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

A comprehensive Index appears at the end of this volume.

Visit the LexisNexis website at http://www.lexisnexis.com for an online bookstore, technical support, customer support, and other company information.

For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 9443 Springboro Pike, Miamisburg, OH 45342.

September 2021 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

- — Advance Code Service
- — Advance Sheets
- — Amendment Notes
- — Analyses
- — Code Status
- — Comparable Legislation from other States
- — Court Rules
- — Cross References
- — Editor's Notes
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- — Placement of Notes
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- — Statute Headings
- — Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 9443 Springboro Pike, Miamisburg, OH 45342.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are retained online indefinitely.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States*.

HISTORY NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The history note follows the section text, preceding any other annotations for the section. Information in the history note is listed in chronological order, first by Codes, then by Laws, with the most recent information listed last. If a section has been renumbered, the former number will appear in the history note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

OPINIONS OF THE ATTORNEY GENERAL

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Opinions of the Attorney General."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
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- Allocation of Acts of Legislature, 1931 — 1972.
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TITLE 85.

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CHAPTER 1.

ASSIGNMENT FOR BENEFIT OF CREDITORS

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§ 85-1-1. Execution of assignment; petition in chancery in case of general assignment.

Assignments for the benefit of creditors may be executed as heretofore; but in every case of a general assignment where the property assigned shall exceed in value the sum of One Thousand Dollars ($1,000.00), the assignee or trustee shall, before he enters upon the discharge of his duties, after taking possession, and within twenty-four (24) hours thereafter, file a petition in the chancery court of the county of the assignor's residence or place of business, or if he had no residence or place of business in this state, then of the county of the residence of some of his creditors, or where the property or some of it may be, for the administration of the trust. The assignor and all of his creditors must be made parties to the petition.

HISTORY: Codes, 1892, § 117; 1906, § 120; Hemingway's 1917, § 107; 1930, § 110; 1942, § 298.

Cross References — Definition of "insolvency proceeding" under Uniform Commercial Code as including assignment for benefit of creditors, see § 75-1-201.

Definition of "lien creditor" under Uniform Commercial Code-Secured Transaction as including assignee for benefit of creditors, see § 75-9-301.

JUDICIAL DECISIONS

ANALYSIS

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4. Effect of assignment on rights and remedies of creditors generally.
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7. Reservations and retention of property.
8. Compositions with creditors.
9. Priorities.
10. Jurisdiction of court.
11. Sale or disposition of assets.
12. Fees, expenses and costs.

1. In general.

Notes and solvent credits of an insolvent bank which passed to an assignee by a general assignment before February 1 in any year are taxable in the hands of the assignee and he should render them to the assessor. Gerard v. Duncan, 84 Miss. 731, 36 So. 1034, 1904 Miss. LEXIS 82 (Miss. 1904).

One making a general assignment for the benefit of his creditors, must, in good faith, devote the whole of his nonexempt property to the payment of his debts, parting absolutely with all control over the same, and must reserve no benefit to himself, and retain no power or control over the property. Union & Planters' Bank v. Allen, 77 Miss. 442, 27 So. 631, 1899 Miss. LEXIS 94 (Miss. 1899).

The assignee in a general assignment occupies a dual relation. Weems v. Love Mfg. Co., 74 Miss. 831, 21 So. 915, 1897 Miss. LEXIS 65 (Miss. 1897).

It is only where the assignment is general that the assignor can petition the chancery court under this chapter; A petition by an assignee in a partial assignment should be dismissed. Lowenstein v. Hooker, 71 Miss. 102, 14 So. 531, 1893 Miss. LEXIS 192 (Miss. 1893).

2. Transactions and transfers creating assignment.

Deeds to real property with separate instrument stating deeds were to secure payment of money did not constitute "assignment for benefit of creditors." Stirling v. Logue, 154 Miss. 812, 123 So. 825, 1929 Miss. LEXIS 178 (Miss. 1929).

It is immaterial that an assignment contained only personalty and that aiding deeds contained only land, where, in law, they constituted one instrument and one transaction. Union & Planters' Bank v. Allen, 77 Miss. 442, 27 So. 631, 1899 Miss. LEXIS 94 (Miss. 1899).

Whether a deed of trust to secure a creditor shall be treated as part of a general assignment made shortly afterward by the debtor is to be determined by the purpose of the creditor in making the former. Pollock v. Sykes, 74 Miss. 700, 21 So. 780, 1897 Miss. LEXIS 59 (Miss. 1897).

Sale of goods, transfer of collaterals and the execution of a deed of trust to a creditor bank, and the assignment for benefit of creditors shortly thereafter, by an insolvent corporation, did not form a general assignment for the benefit of creditors where they were separate and independent transactions. Sells v. Rosedale Grocery & Com. Co., 72 Miss. 590, 17 So. 236, 1895 Miss. LEXIS 9 (Miss. 1895).

The dismissal of the petition of the assignee in a partial assignment carries with it a cross-petition filed by creditors. Lowenstein v. Hooker, 71 Miss. 102, 14 So. 531, 1893 Miss. LEXIS 192 (Miss. 1893).

A conveyance by an officer (state treasurer) to indemnify the sureties on his official bond against loss by defalcation, though embracing all the grantor's property, is not an assignment subject to the strict rules governing such instruments but is a mortgage enforceable upon the contingency of liability and dependent upon future developments. State v. Hemingway, 69 Miss. 491, 10 So. 575, 1891 Miss. LEXIS 78 (Miss. 1891).

3. —Partial assignments.

A partial assignment is not invalidated by the fact that shortly before its execution the assignor had fraudulently converted a part of his assets into money. Thompson v. Preston, 73 Miss. 587, 19 So. 347, 1895 Miss. LEXIS 167 (Miss. 1895).

The omission of a substantial part of the assignor's property makes it a partial assignment and preferences thereby created are not void for noncompliance with the statute relating to general assignments. Newman v. Black, 73 Miss. 239, 18 So. 543, 1895 Miss. LEXIS 81 (Miss. 1895).

While an assignment purporting to convey only specific property must be treated as a partial assignment until the contrary be shown, yet if it does in fact convey all of the assignee's property liable for his debts, it will be dealt with as a general assignment regardless of its terms. Newman v. Black, 73 Miss. 239, 18 So. 543, 1895 Miss. LEXIS 81 (Miss. 1895).

Debtor's assignment of part of estate for benefit of certain creditors and conveyance of remainder of its property to another creditor held not a general assignment. Starling & Smith Co. v. Flash, 16 So. 875 (Miss. 1894).

This section [Code 1942, § 298] is not applicable to partial assessments but applies only to general assignments. Lowenstein v. Hooker, 71 Miss. 102, 14 So. 531, 1893 Miss. LEXIS 192 (Miss. 1893).

A partial assignment acts only on the property embraced in it. Hence an assignment which without purporting to embrace all the assignor's property conveys his stock of merchandise in a designated store, together with the notes and books of account pertaining thereto, is partial regardless of what the grantor thought or intended. Jones v. McQueen, 71 Miss. 98, 14 So. 146, 1893 Miss. LEXIS 155 (Miss. 1893).

Whether an assignment is general or partial is to be determined by its terms. Jones v. McQueen, 71 Miss. 98, 14 So. 146, 1893 Miss. LEXIS 155 (Miss. 1893).

4. Effect of assignment on rights and remedies of creditors generally.

A general assignment does not defeat a landlord's rights but he must apply to the chancery court for the payment of his rent out of the proceeds of the assigned property. Rice v. Harris, 76 Miss. 422, 24 So. 880, 1898 Miss. LEXIS 111 (Miss. 1898).

No jurisdiction over property is acquired by chancery court until petition of assignee is filed and bond approved, and until then creditors may attach the same in the hands of the assignee. Weimer v. Scales, 74 Miss. 1, 19 So. 588, 1896 Miss. LEXIS 94 (Miss. 1896).

However, the landlord suing out an attachment cannot make an actual levy. By application to the chancery court he may proceed against the property or its proceeds. Paine v. Sykes, 72 Miss. 351, 16 So. 903, 1894 Miss. LEXIS 119 (Miss. 1894).

The assignment as written is the law for the administration of the insolvent's estate; neither the assignee nor the courts may add to or subtract therefrom and as written it must be susceptible of complete execution without depriving creditors of their legal rights or it may not stand against their attack. Rothenberg v. Bradley, 69 Miss. 1, 10 So. 922, 1891 Miss. LEXIS 87 (Miss. 1891); Selleck v. Pollock, 69 Miss. 870, 13 So. 248, 1892 Miss.

LEXIS 25 (Miss. 1892); Hiller v. Ellis, 72 Miss. 701, 18 So. 95, 1895 Miss. LEXIS 34 (Miss. 1895).

An assignee is not a bona fide purchaser and therefore goods assigned to him which are liable to be attached for rent, may be still subjected to the landlord's demand. Paine v. Aberdeen Hotel Co., 60 Miss. 360, 1882 Miss. LEXIS 64 (Miss. 1882); Paine v. Sykes, 72 Miss. 351, 16 So. 903, 1894 Miss. LEXIS 119 (Miss. 1894).

5. Validity of assignments generally.

The failure to file schedules as provided by Code 1942, § 306 does not affect the general assignment where no preferences are made. Kaufman v. Simon, 80 Miss. 189, 31 So. 713, 1902 Miss. LEXIS 241 (Miss. 1902).

The only penalty inflicted by the law upon one who executes or procures the execution to him of a fraudulent assignment is the loss of the benefits of the instrument. Weems v. Love Mfg. Co., 74 Miss. 831, 21 So. 915, 1897 Miss. LEXIS 65 (Miss. 1897).

A subsequent composition agreement and the dealings of the parties thereunder cannot be considered in determining the validity of an assignment, and a deed in aid thereof. Allen v. Union & Planters' Bank, 72 Miss. 549, 17 So. 442, 1895 Miss. LEXIS 18 (Miss. 1895); English v. Friedman, 70 Miss. 457, 12 So. 252, 1892 Miss. LEXIS 112 (Miss. 1892).

In the absence of exceptional circumstances, one partner cannot, without the consent of his copartner, make a general assignment for the benefit of creditors, and being prima facie invalid, the burden of proof to show consent of the other partner is upon those who would maintain it. Mayer v. Bernstein, 69 Miss. 17, 12 So. 257, 1891 Miss. LEXIS 103 (Miss. 1891).

Subsequent ratification by the nonexecuting partner will not affect the liens of creditors who have assailed it. Mayer v. Bernstein, 69 Miss. 17, 12 So. 257, 1891 Miss. LEXIS 103 (Miss. 1891).

A voluntary assignment by an insolvent partnership which devotes partnership assets to the payment of individual debts of a partner is fradulent and void as to firm creditors. Rothenberg v. Bradley, 69 Miss. 1, 10 So. 922, 1891 Miss. LEXIS 87 (Miss. 1891).

The intent which will void a voluntary assignment need not be an actual corrupt intent; where the thing done is unlawful and naturally results in hindering, delaying, or defrauding creditors, the law imputes a fraudulent intent and this is so whether the unlawful thing is shown by extrinsic evidence or appears on the face of the deed. Rothenberg v. Bradley, 69 Miss. 1, 10 So. 922, 1891 Miss. LEXIS 87 (Miss. 1891).

6. Preferences.

Debtor may make assignment preferring general creditors. Bradberry v. Adams, 110 Miss. 581, 70 So. 697, 1915 Miss. LEXIS 79 (Miss. 1915).

The tendency is to recognize the view that preferences were allowed at common law and that the principles of an insolvent or bankrupt law are not applicable to the making of general assignments. Pollock v. Sykes, 74 Miss. 700, 21 So. 780, 1897 Miss. LEXIS 59 (Miss. 1897).

While an insolvent corporation may in good faith prefer creditors, yet the directors cannot prefer themselves. Love Mfg. Co. v. Queen City Mfg. Co., 74 Miss. 290, 20 So. 146, 1896 Miss. LEXIS 103 (Miss. 1896).

The omission of a substantial part of the assignor's property makes it a partial assignment and preferences thereby created are not void for noncompliance with the statute in relation to general assignments. Newman v. Black, 73 Miss. 239, 18 So. 543, 1895 Miss. LEXIS 81 (Miss. 1895).

An assignment stating the debt of a preferred creditor somewhat in excess of the amount due him, is not thereby invalidated where it authorizes the assignee to correct the schedule of liabilities if by inadvertence there was a mistake or error in the amounts thereof. Goodbar Shoe Co. v. Montgomery, 73 Miss. 73, 19 So. 196, 1895 Miss. LEXIS 140 (Miss. 1895); H. Wetler Mfg.v Dinkins, 70 Miss. 835, 12 So. 584, 1893 Miss. LEXIS 11 (Miss. 1893); Hiller v. Ellis, 72 Miss. 701, 18 So. 95, 1895 Miss. LEXIS 34 (Miss. 1895).

Where formal insolvency proceedings are waived and by consent a decree is entered directing the administrator of an insolvent decedent's estate to make distribution among creditors, he becomes personally liable for the amounts decreed to them respectively and may prefer such a creditor in a partial assignment of his property. Allen v. Smith Bros. Co., 72 Miss. 689, 18 So. 579, 1895 Miss. LEXIS 72 (Miss. 1895); Anderson v. Tindall, 26 Miss. 332, 1853 Miss. LEXIS 97 (Miss. 1853).

Where a usurious debt is intentionally preferred, such preference is unlawful and avoids the assignment. Hiller v. Ellis, 72 Miss. 701, 18 So. 95, 1895 Miss. LEXIS 34 (Miss. 1895); H. Wetler Mfg.v Dinkins, 70 Miss. 835, 12 So. 584, 1893 Miss. LEXIS 11 (Miss. 1893).

A release from personal liability given the assignor by a preferred creditor for a usurious debt, will not make the assignee, who had notice of the usury, a bona fide purchaser for the protection of such preference. Hiller v. Ellis, 72 Miss. 701, 18 So. 95, 1895 Miss. LEXIS 34 (Miss. 1895); H. Wetler Mfg.v Dinkins, 70 Miss. 835, 12 So. 584, 1893 Miss. LEXIS 11 (Miss. 1893).

Knowledge by the assignee of the unlawful act of the assignor will avoid it although the preferred creditor has paid value. Hiller v. Ellis, 72 Miss. 701, 18 So. 95, 1895 Miss. LEXIS 34 (Miss. 1895); H. Wetler Mfg.v Dinkins, 70 Miss. 835, 12 So. 584, 1893 Miss. LEXIS 11 (Miss. 1893).

An insolvent corporation or individual may prefer creditors by mortgage, sale or assignment in cases untainted by fraud. Sells v. Rosedale Grocery & Com. Co., 72 Miss. 590, 17 So. 236, 1895 Miss. LEXIS 9 (Miss. 1895).

An assignment is not invalid because it prefers a fee to attorneys “for services and advice in and about this assignment and for the execution of this trust,” since in these matters necessary counsel fees are allowable. Memphis Grocery Co. v. Leach, 71 Miss. 959, 15 So. 113, 1894 Miss. LEXIS 12 (Miss. 1894).

An assignment preferring a creditor whose debt embraces usury is not invalid if the amount directed to be paid does not exceed the principal and legal interest; the assignor may waive his personal privilege of defeating all interest. H. Wetler Mfg.v Dinkins, 70 Miss. 835, 12 So. 584, 1893 Miss. LEXIS 11 (Miss. 1893).

But a general assignment directing payment to a particular attorney of a fixed sum as a fee not alone for drawing the assignment but also for services thereafter to be rendered in maintaining it if assailed and that whether the services are required or not, is fraudulent and void. Selleck v. Pollock, 69 Miss. 870, 13 So. 248, 1892 Miss. LEXIS 25 (Miss. 1892).

Where one partner buys the interest of another giving his note therefor and afterward fails and makes an assignment he may prefer this debt and also a debt for money loaned him by the retiring partner after his withdrawal, notwithstanding there was no notice of the withdrawal of the retiring partner and that by reason thereof he might be personally liable for debts subsequently contracted. Richardson v. Davis, 70 Miss. 219, 11 So. 790, 1892 Miss. LEXIS 76 (Miss. 1892).

A preference in favor of the tax collector for taxes on lands owned by the partners individually will avoid the assignment by an insolvent partnership. Rothenberg v. Bradley, 69 Miss. 1, 10 So. 922, 1891 Miss. LEXIS 87 (Miss. 1891).

The preference of a fictitious debt makes the assignment void as to creditors, although the grantor through mistake of law supposed he owed the debt. Whether this would be so if a debt not really due were unintentionally preferred through honest mistake of fact is not decided. Rothenberg v. Bradley, 69 Miss. 1, 10 So. 922, 1891 Miss. LEXIS 87 (Miss. 1891).

7. Reservations and retention of property.

An assignment conveying lands, tenements and “hereditaments” passes to the assignee by the use of the word “hereditaments” the right of the rents and the retention by the assignor of the rent notes and the subsequent delivery of them to a third person, being wholly ineffectual to defeat the assignee’s right to the rents, will not invalidate the assignment. Allen v. Smith Bros. Co., 72 Miss. 689, 18 So. 579, 1895 Miss. LEXIS 72 (Miss. 1895); Hatch v. Sykes, 64 Miss. 307, 1 So. 248, 1886 Miss. LEXIS 62 (Miss. 1886); Kessee v. Sloan, 69 Miss. 369, 11 So. 631, 1891 Miss. LEXIS 98 (Miss. 1891).

Retention of a part of the property assigned under the facts stated held to avoid the assignment. Mahorner v. Forcheimer,

73 Miss. 302, 18 So. 570, 1895 Miss. LEXIS 86 (Miss. 1895).

If an assignor in good faith includes in a general assignment all of his known estate, it cannot be avoided because it afterward appears that he owned land not included in it, of which he knew nothing. Nor will his subsequent bad faith with regard to such land avoid it. English v. Friedman, 70 Miss. 457, 12 So. 252, 1892 Miss. LEXIS 112 (Miss. 1892).

A general voluntary assignment by an insolvent debtor is void as to creditors if he reserves of the assets for his own benefit $100, notwithstanding the assets be of great value and the sum withheld be to meet pressing family necessities. Montgomery v. Goodbar, 69 Miss. 333, 13 So. 624, 1891 Miss. LEXIS 136 (Miss. 1891); Rothenberg v. Bradley, 69 Miss. 1, 10 So. 922, 1891 Miss. LEXIS 87 (Miss. 1891).

A general assignment is not objectionable because it reserves to the assignor the right, with the assent of a majority of the creditors, to appoint another assignee if the one named declines the trust. Smith v. Bowdre, 69 Miss. 692, 13 So. 829, 1892 Miss. LEXIS 39 (Miss. 1892).

The reservation by a partner of money which legally belongs to the firm, and which in general terms the assignment purports to convey, will void the assignment. Rothenberg v. Bradley, 69 Miss. 1, 10 So. 922, 1891 Miss. LEXIS 87 (Miss. 1891).

8. Compositions with creditors.

Where composition agreement between assignors and their creditors provided for redelivery of personalty to assignors but expressly provided for retention of title to realty for the benefit of creditors, the agreement revoked the assignment as to the personalty but did not affect the assignment of the realty. Union & Planters' Bank v. Allen, 77 Miss. 442, 27 So. 631, 1899 Miss. LEXIS 94 (Miss. 1899).

Fact that composition agreement between assignors and their creditors modified the assignment and provided that the assignors, through the trustee, should have the power to sell or mortgage the realty conveyed for the benefit of creditors, did not render the assignment void, since it merely constituted the assignors, on account of their perfect knowledge of the lands involved, agents of the assignee. Union & Planters' Bank v. Allen, 77 Miss. 442, 27 So. 631, 1899 Miss. LEXIS 94 (Miss. 1899).

An extension of time allowed the trustee in which to carry out the liquidation of property assigned for the benefit of creditors of a co-partnership, provided for in a composition agreement of the partnership creditors, did not render the assignment void as to a creditor of one of the partners, where such extension was reasonable and incidental and necessary to the proper execution of the trust. Union & Planters' Bank v. Allen, 77 Miss. 442, 27 So. 631, 1899 Miss. LEXIS 94 (Miss. 1899).

A subsequent composition agreement and the dealings of the parties thereunder cannot be considered in determining the validity of an assignment, and a deed in aid thereof. English v. Friedman, 70 Miss. 457, 12 So. 252, 1892 Miss. LEXIS 112 (Miss. 1892).

9. Priorities.

Mortgagee held entitled to enforce mortgage against assigned property though description void and mortgage not recordable. Sayers & Scoville Co. v. Doak, 127 Miss. 216, 89 So. 917, 1921 Miss. LEXIS 216 (Miss. 1921).

Creditors filing a cross-petition where the assignment is adjudged void, are entitled to priority of payment out of the proceeds of the assigned property. The residue should be ratably distributed among all other creditors including those preferred. Creditors who have not attacked the assignment itself, but merely sought to defeat the preferences made under it, are not entitled to priority over the preferred creditors. Mahorner v. Forcheimer, 73 Miss. 302, 18 So. 570, 1895 Miss. LEXIS 86 (Miss. 1895).

10. Jurisdiction of court.

The court acquires no jurisdiction over the property assigned until the assignee has filed a petition and his bond has been approved and until then creditors may attack the same in the hands of the assignee. Weimer v. Scales, 74 Miss. 1, 19 So. 588, 1896 Miss. LEXIS 94 (Miss. 1896).

Filing the assignment for record in the office of the clerk of the chancery court does not vest the court with jurisdiction over the property. Weimer v. Scales, 74 Miss. 1, 19 So. 588, 1896 Miss. LEXIS 94 (Miss. 1896).

Where the court acquires jurisdiction it draws to it the determination of all controversies in which liens are asserted, including attachments levied thereon. Weimer v. Scales, 74 Miss. 1, 19 So. 588, 1896 Miss. LEXIS 94 (Miss. 1896).

11. Sale or disposition of assets.

In a nonpreferential assignment providing for the payment of liabilities ratably a creditor who holds collateral security is not entitled to dividends upon the face of his claim without crediting the value of the collateral. Union & Planters' Bank v. Duncan, 84 Miss. 467, 36 So. 690, 1904 Miss. LEXIS 78 (Miss. 1904).

An arrangement that the assignors in the negotiation of sales of property assigned for the benefit of creditors, because of their knowledge of the effects and their value, should act as agents of the assignee, is legal. Union & Planters' Bank v. Allen, 77 Miss. 442, 27 So. 631, 1899 Miss. LEXIS 94 (Miss. 1899).

Where previous attachments have been levied, a sale of the property by the assignee-receiver should be made free from the lien of the attachments, and the proceeds should be applied by the court to the payment of the attaching creditors. Weems v. Love Mfg. Co., 74 Miss. 831, 21 So. 915, 1897 Miss. LEXIS 65 (Miss. 1897).

12. Fees, expenses and costs.

Under the facts stated an assignment was held to be general and an attorney was held entitled to have the funds charged with a reasonable fee for his services. Tishomingo Sav. Inst. v. Allen, 76 Miss. 114, 23 So. 305, 1898 Miss. LEXIS 52 (Miss. 1898).

Where an assignment is made after the rendition and enrollment of a judgment against the assignor, the assignee is not entitled as against the judgment creditor to withhold fees, costs, and commissions incurred in resisting his demand out of the proceeds of the assigned property. Pittman v. Hopkins, 74 Miss. 563, 21 So. 606, 1896 Miss. LEXIS 183 (Miss. 1896).

The assignee in a general assignment, acting as receiver, should be allowed counsel fees incurred in successfully defending the assignment or preserving the assigned property but not fees incurred in an unsuccessful defense of the assignment whether it be held void for actual fraud or for merely failing to comply with the statutory requirements. Perry Mason Shoe Co. v. Sykes, 72 Miss. 390, 17 So. 171, 1894 Miss. LEXIS 131 (Miss. 1894); Kelly v. Davis, 37 Miss. 76, 1859 Miss. LEXIS 7 (Miss. 1859).

There is no impropriety in counsel for the receiver also representing creditors who are preferred in the assignment and seeking to uphold it. Perry Mason Shoe Co. v. Sykes, 72 Miss. 390, 17 So. 171, 1894 Miss. LEXIS 131 (Miss. 1894).

The assignee-receiver is not bound to defend an assignment at his own expense but he should give notice to creditors interested to defend or secure indemnity from them against expenses necessary in the defense. Perry Mason Shoe Co. v. Sykes, 72 Miss. 390, 17 So. 171, 1894 Miss. LEXIS 131 (Miss. 1894).

An assignment is not invalid because it prefers a fee to attorneys "for services and advice in and about this assignment and for the execution of this trust," since in these matters necessary counsel fees are allowable. Memphis Grocery Co. v. Leach, 71 Miss. 959, 15 So. 113, 1894 Miss. LEXIS 12 (Miss. 1894).

The assignee may be allowed a gross sum for his entire services as receiver and manager. Perry Mason Shoe Co. v. Sykes, 72 Miss. 390, 17 So. 171, 1894 Miss. LEXIS 131 (Miss. 1894); Lichtenstein v. Dial, 68 Miss. 54, 8 So. 272, 1890 Miss. LEXIS 11 (Miss. 1890).

But a general assignment directing payment to a particular attorney of a fixed sum as a fee not alone for drawing the assignment but also for services thereafter to be rendered in maintaining it if assailed and that whether the services are required or not, is fradulent and void. Taggert v. Muse, 60 Miss. 870, 1883 Miss. LEXIS 27 (Miss. 1883).

RESEARCH REFERENCES

Am. Jur.

6 Am. Jur. 2d, Assignments for Benefit of Creditors §§ 1 et seq.

2A Am. Jur. Pl & Pr Forms (Rev), Assignments for Benefit of Creditors, Form 1 (petition or application for court order assuming jurisdiction of assignor's estate, confirming designation of trustee or assignee, appointing counsel, and providing for administration of estate).

2A Am. Jur. Pl & Pr Forms (Rev), Assignments for Benefit of Creditors, Form 1.1 (answer-defense-assignment not made by proper party).

2A Am. Jur. Pl & Pr Forms (Rev), Assignments for Benefit of Creditors, Form 2 (order assuming jurisdiction of assignor's estate, confirming designation of trustee or assignee, appointing counsel, and authorizing public or private sale of assets).

2B Am. Jur. Legal Forms 2d, Assignments, §§ 26:11 et seq. (general assignments).

Law Reviews.

Dowd, Allowing Current Debtors to Retain Collateral without Reaffirming or Redeeming: A Healthy Balance Between Creditor and Debtor Rights. 17 Miss. C. L. Rev. 131, Fall, 1996.

The effect of bankruptcy and encumbrances on mineral interests in Mississippi. 53 Miss. L. J. 551, December, 1983.

§ 85-1-3. Schedules of liabilities and assets to be filed.

With every general assignment there shall be filed, unless the data all appear on its face, at least two (2) schedules. One of them, a schedule of liabilities, must set forth, so far as known to the assignor:

(a) The name of each of his creditors;

(b) The post-office address of each of them;

(c) The sum due each;

(d) How each debt is evidenced;

(e) The amount of interest each debt bears, and if in any way the debt is usurious, the facts must be stated;

(f) The consideration for each debt; and in case of renewals the history of the transaction must be traced to the original consideration; and

(g) What security, if any, each creditor has.

The other, a schedule of assets, must describe the property conveyed, and give its location and value. Both schedules-and if the data be in the face of the deed, then the assignment-must be under the oath of the assignor avowing the truthfulness of the matters of fact stated. A general assignment which does not comply with this section shall be void as to all preferences contained in it.

HISTORY: Codes, 1892, § 124; 1906, § 128; Hemingway's 1917, § 115; 1930, § 118; 1942, § 306.

JUDICIAL DECISIONS

1. In general.

Deeds to real property with separate instrument stating deeds were to secure payment of money did not constitute "assignment for benefit of creditors." Stirling v. Logue, 154 Miss. 812, 123 So. 825, 1929 Miss. LEXIS 178 (Miss. 1929).

Failure to file schedules as provided herein does not affect a general assignment containing no preferences. Kaufman v. Simon, 80 Miss. 189, 31 So. 713, 1902 Miss. LEXIS 241 (Miss. 1902).

A substantial compliance is sufficient as where the assignment and schedules together indicate the assets and liabilities so as to give full information as to both. Memphis Grocery Co. v. Leach, 71 Miss. 959, 15 So. 113, 1894 Miss. LEXIS 12 (Miss. 1894).

RESEARCH REFERENCES

Am. Jur.
6 Am. Jur. 2d, Assignments for Benefit of Creditors §§ 29, 30.
2B Am. Jur. Legal Forms 2d, Assignments for Benefit of Creditors §§ 26:44, 26:45. (schedules and inventories).

CJS.
6A C.J.S., Assignments § 63.

§ 85-1-5. Bond of assignee or trustee.

The assignee or trustee must file a bond with his petition, to be approved by the clerk, in a penalty equal to the value of all the property assigned and Two Hundred and Fifty Dollars ($250.00) additional, payable to the state, with at least two (2) sufficient sureties, conditioned for the faithful administration of his trust. Any judgment or decree that may be rendered in said cause or proceeding against the principal in the bond may be rendered against the sureties therein.

HISTORY: Codes, 1892, § 118; 1906, § 121; Hemingway's 1917, § 108; 1930, § 111; 1942, § 299.

JUDICIAL DECISIONS

1. In general.
Bond of assignee cannot be reduced. United States Fidelity & Guaranty Co. v. Felder, 105 Miss. 283, 62 So. 236, 1913 Miss. LEXIS 203 (Miss. 1913).

No jurisdiction over property is acquired by chancery court until petition of assignee is filed and bond approved, and until then creditors may attach the same in the hands of the assignee. Weimer v. Scales, 74 Miss. 1, 19 So. 588, 1896 Miss. LEXIS 94 (Miss. 1896).

RESEARCH REFERENCES

Am. Jur.
6 Am. Jur. 2d, Assignments for Benefit of Creditors § 104.

CJS.
6A C.J.S., Assignments § 103.

§ 85-1-7. Assignee to become receiver of the court.

The assignee, upon filing the petition and the approval of his bond, shall become a receiver of the court, and shall be entitled to all the rights and privileges, and subject to all the duties and obligations, of other receivers in equity, and may be removed as such as in other cases, and shall not be sued in any other court save by permission of the court, or chancellor in vacation.

HISTORY: Codes, 1892, § 119; 1906, § 122; Hemingway's 1917, § 109; 1930, § 112; 1942, § 300.

Cross References — Appointment of receivers, see §§ 11-5-151 et seq.

JUDICIAL DECISIONS

1. In general.

Assignee's duty to represent interest of creditors in suit questioning validity of assignment. United States Fidelity & Guaranty Co. v. Jefferson Davis County, 114 Miss. 474, 75 So. 247, 1917 Miss. LEXIS 47 (Miss. 1917).

Assignee will not cease to be assignee for benefit of creditors, although assignment be declared void. United States Fidelity & Guaranty Co. v. Jefferson Davis County, 114 Miss. 474, 75 So. 247, 1917 Miss. LEXIS 47 (Miss. 1917).

Assignee held to have right to possession of goods superior to lien for purchase money. Goodbar & Co. v. Knight, 89 Miss. 124, 42 So. 539, 1906 Miss. LEXIS 49 (Miss. 1906).

RESEARCH REFERENCES

Am. Jur.

6 Am. Jur. 2d, Assignments for Benefit of Creditors §§ 88, 123-132.

CJS.

6A C.J.S., Assignments §§ 104 et seq.

§ 85-1-9. Inventories.

The assignee shall, as speedily as may be, and within ten (10) days after the filing of his petition, unless the court or the chancellor in vacation, shall, for cause, extend the time, prepare and file in the cause a complete and perfect inventory of the property and effects assigned. If, after making the first inventory, any other property or effects conveyed by the deed of assignment shall come to the possession or knowledge of the assignee, he shall make a supplemental inventory thereof speedily, and within ten (10) days thereafter, unless the time therefor shall be extended as provided in the case of the original inventory.

HISTORY: Codes, 1892, § 120; 1906, § 123; Hemingway's 1917, § 110; 1930, § 113; 1942, § 301.

RESEARCH REFERENCES

Am. Jur.

6 Am. Jur. 2d, Assignments for Benefit of Creditors § 100.

2B Am. Jur. Legal Forms 2d, Assignments for Benefit of Creditors §§ 26:44, 26:45 (schedules and inventories).

CJS.

6A C.J.S., Assignments § 63.

§ 85-1-11. Creditor's cross-petition to set aside assignment.

Any creditor may file in said cause a cross-petition against the receiver, and he may make the assignor or other persons, whether parties to the suit before that time or not, defendants thereto, and show to the court that the assignment is fraudulent, or ought not, for any other reasons, to be enforced;

and property other than that in the trustee's or assignee's hands may be shown to be liable for the debts of the assignor.

HISTORY: Codes, 1892, § 121; 1906, § 124; Hemingway's 1917, § 111; 1930, § 114; 1942, § 302.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Grounds of attack.
3. Pleadings.

1. In general.

A petition under a partial assignment will be dismissed as only the assignee in a general assignment can petition to have a trust administered; A cross-petition by the creditors falls with the dismissal of the assignee's petition. Lowenstein v. Hooker, 71 Miss. 102, 14 So. 531, 1893 Miss. LEXIS 192 (Miss. 1893).

2. Grounds of attack.

Provision in assignment for allowance of attorney's fees by chancery court held not to create a preference. Dodwell v. Rieves, 114 Miss. 4, 74 So. 770, 1917 Miss. LEXIS 4 (Miss. 1917).

General assignment by directors of bank without stockholders' consent held valid. Dodwell v. Rieves, 114 Miss. 4, 74 So. 770, 1917 Miss. LEXIS 4 (Miss. 1917).

An assignment for the benefit of its creditors executed under an exigency, requiring prompt action by a corporation acting through a legal quorum of its directors in pursuance of directions from the stockholders at a meeting in which a majority of the stock and stockholders were represented, is not void or voidable at the suit of creditors, none of the stockholders objecting thereto because prompt notice was not given of the meetings. State Nat'l Bank v. Duncan, 83 Miss. 610, 35 So. 569 (Miss. 1904).

A creditor cannot for the first time on appeal urge that the preferences in the assignment made by his debtor for the benefit of all creditors should be declared void for the failure of the debtor to file a proper schedule of his assets. Lowenstein v. Leach, 16 So. 493 (Miss. 1895).

3. Pleadings.

Not error to compel parties filing doubtful pleading to elect whether to treat it as cross-petition or original bill in equity. Metcalfe v. Merchants' & Planters' Bank, 89 Miss. 649, 41 So. 377, 1906 Miss. LEXIS 40 (Miss. 1906).

RESEARCH REFERENCES

Am. Jur.

6 Am. Jur. 2d, Assignments for Benefit of Creditors § 106.

2A Am. Jur. Pl & Pr Forms (Rev), Assignment for Benefit of Creditors, Forms 111 et seq.

§ 85-1-13. Creditor's cross-petition to set aside assignment; rights of successful creditor.

The creditor filing a cross-petition, if he succeed in establishing that the assignment ought not to be enforced, shall have priority over all other creditors in the distribution of the proceeds of the property in the assignee's hands, and a lien, from the filing of his cross-petition, on other property he may seek to have subjected to his debt; and in aid of such lien, a writ of sequestration, injunction, or other remedial process may issue.

HISTORY: Codes, 1892, § 121; 1906, § 124; Hemingway's 1917, § 111; 1930, § 114; 1942, § 302.

Cross References — Affidavit for attachment, see § 11-33-9.

Priority of unemployment compensation contributions during distribution of employer's assets pursuant to assignment for benefit of creditors, see § 71-5-377.

JUDICIAL DECISIONS

1. In general.

Creditors who unsuccessfully attack a general assignment by a corporation on the sole ground that it had not been duly executed are not thereby precluded from participating in the distribution of the assets. Duncan v. State Nat'l Bank, 85 Miss. 681, 38 So. 45, 1904 Miss. LEXIS 184 (Miss. 1904).

Creditors filing a cross-petition and establishing their debts are entitled to a personal decree against the assignor even if they fail to vacate the assignment. Pollock v. Sykes, 74 Miss. 700, 21 So. 780, 1897 Miss. LEXIS 59 (Miss. 1897).

Creditors who, by cross-petition, successfully assail an assignment, are entitled to priority; those who do not assail the assignment but merely the preferences, are not entitled to priority over preferred creditors but share with them in the distribution of the residue. Mahorner v. Forcheimer, 73 Miss. 302, 18 So. 570, 1895 Miss. LEXIS 86 (Miss. 1895).

RESEARCH REFERENCES

Am. Jur.

2A Am. Jur. Pl & Pr Forms (Rev), Assignment for Benefit of Creditors, Forms 111 et seq.

§ 85-1-15. Creditor's cross-petition to set aside assignment; rights of unsuccessful creditor.

Whenever a creditor may seek to set aside the assignment for any reason as provided in this chapter, and fail to do so, he shall nevertheless receive the share provided for him according to the terms of the instrument, first, however, deducting therefrom all the court costs, reasonable attorneys' fees, and other necessary expenses incurred by the assignee in defending the suit.

HISTORY: Codes, 1906, § 125; Hemingway's 1917, § 112; 1930, § 115; 1942, § 303.

RESEARCH REFERENCES

ALR.

Validity of statute allowing attorneys' fees to successful claimant but not to defendant, or vice versa. 73 A.L.R.3d 515.

Am. Jur.

6 Am. Jur. 2d, Assignments for Benefit of Creditors §§ 106 et seq.

2A Am. Jur. Pl & Pr Forms (Rev), Assignment for Benefit of Creditors, Forms 111 et seq.

§ 85-1-17. Personal decree against assignor.

A creditor may demand, by cross-petition, a personal decree against the assignor for the amount of his debt; but priority of such personal decrees shall not affect the distribution of the assigned effects, or the proceeds thereof.

HISTORY: Codes, 1892, § 122; 1906, § 126; Hemingway's 1917, § 113; 1930, § 116; 1942, § 304.

RESEARCH REFERENCES

Am. Jur.
6 Am. Jur. 2d, Assignments for Benefit of Creditors §§ 106 et seq.

§ 85-1-19. Duty of creditors to establish claims.

It shall be the duty of all creditors to establish their claims in said cause to the satisfaction of the court; and any creditor may oppose and controvert the demand or claim, in whole or in part, of any other person; and the court shall, on motion, cause all proper issues to be made up to test the validity of claims.

HISTORY: Codes, 1892, § 123; 1906, § 127; Hemingway's 1917, § 114; 1930, § 117; 1942, § 305.

JUDICIAL DECISIONS

1. In general.
The scheme of the chapter contemplates one proceeding in which assignee, assignor and all creditors are required to appear as parties and make good their demands. Mahorner v. Forcheimer, 73 Miss. 302, 18 So. 570, 1895 Miss. LEXIS 86 (Miss. 1895).

RESEARCH REFERENCES

Am. Jur.
6 Am. Jur. 2d, Assignments for Benefit of Creditors §§ 123, 124.

2A Am. Jur. Pl & Pr Forms (Rev), Assignments for Benefit of Creditors, Forms 41 et seq. (administration of estate).

CHAPTER 3.

EXEMPT PROPERTY

Sec.

85-3-1. Property exempt from seizure under execution or attachment.
85-3-2. Certain federal exemptions prohibited.
85-3-3. Execution or attachment of personal property; selection of exempt property.
85-3-4. Execution or attachment of wages, salaries or other compensation; limitations.
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85-3-7. Execution or attachment of personal property; defendant may sue on plaintiff's indemnity bond.
85-3-9. Execution or attachment of personal property; replevy by defendant.
85-3-11. Proceeds of life insurance policy; named beneficiaries; certain proceeds of policies exempt from liability for debts of person insured.
85-3-13. Proceeds of life insurance policy; payable to executor; limits.
85-3-15. Proceeds of life insurance policy; unassigned policies.
85-3-17. Judgment for personal injury.
85-3-19. Beneficiaries of deceased plaintiff take damages free from debts.
85-3-21. Homestead exemption; land and buildings.
85-3-23. Homestead exemption; land and buildings; insurance proceeds; personal property.
85-3-25. Homestead declaration; form; deposit with clerk of chancery court.
85-3-27. Homestead declaration; effect.
85-3-29. Homestead declaration; recording.
85-3-31. Homestead designated by law when not selected.
85-3-33. Heirs may designate homestead.
85-3-35. Allotment of homestead; selection of householders or freeholders to set off portion of land.
85-3-37. Allotment of homestead; premises not capable of division.
85-3-39. Allotment of homestead; how contested by plaintiff.
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85-3-43. Homestead liable to debts when debtor ceases to reside thereon.
85-3-45. Repealed.
85-3-47. Property not exempt from execution.
85-3-49. Exempt property may be disposed of.
85-3-51. Exemptions allowed to residents only.
85-3-52. Judgment or claim of another state or political subdivision for failure to pay income tax on pension or retirement benefits.

§ 85-3-1. Property exempt from seizure under execution or attachment.

There shall be exempt from seizure under execution or attachment:

(a) Tangible personal property of the following kinds selected by the debtor, not exceeding Ten Thousand Dollars ($10,000.00) in cumulative value:

(i) Household goods, wearing apparel, books, animals or crops;

(ii) Motor vehicles;

(iii) Implements, professional books or tools of the trade;

(iv) Cash on hand;

(v) Professionally prescribed health aids;

(vi) Any items of tangible personal property worth less than Two Hundred Dollars ($200.00) each.

Household goods, as used in this paragraph (a), means clothing, furniture, appliances, one (1) radio and one (1) television, one (1) firearm, one (1) lawn mower, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the debtor and his dependents; however, works of art, electronic entertainment equipment (except one (1) television and one (1) radio), jewelry (other than wedding rings), and items acquired as antiques are not included within the scope of the term "household goods." This paragraph (a) shall not apply to distress warrants issued for collection of taxes due the state or to wages described in Section 85-3-4.

(b)(i) The proceeds of insurance on property, real and personal, exempt from execution or attachment, and the proceeds of the sale of such property.

(ii) Income from disability insurance.

(c) All property in this state, real, personal and mixed, for the satisfaction of a judgment or claim in favor of another state or political subdivision of another state for failure to pay that state's or that political subdivision's income tax on benefits received from a pension or other retirement plan. As used in this paragraph (c), "pension or other retirement plan" includes:

(i) An annuity, pension, or profit-sharing or stock bonus or similar plan established to provide retirement benefits for an officer or employee of a public or private employer or for a self-employed individual;

(ii) An annuity, pension, or military retirement pay plan or other retirement plan administered by the United States; and

(iii) An individual retirement account.

(d) One (1) mobile home, trailer, manufactured housing, or similar type dwelling owned and occupied as the primary residence by the debtor, not exceeding a value of Thirty Thousand Dollars ($30,000.00); in determining this value, existing encumbrances on the dwelling, including taxes and all other liens, shall first be deducted from the actual value of the dwelling. A debtor is not entitled to the exemption of a mobile home as personal property who claims a homestead exemption under Section 85-3-21, and the exemption shall not apply to collection of delinquent taxes under Sections 27-41-101 through 27-41-109.

(e) Assets held in, or monies payable to the participant or beneficiary from, whether vested or not, (i) a pension, profit-sharing, stock bonus or similar plan or contract established to provide retirement benefits for the participant or beneficiary and qualified under Section 401(a), 403(a), or 403(b) of the Internal Revenue Code (or corresponding provisions of any successor law), including a retirement plan for self-employed individuals qualified under one (1) of such enumerated sections, (ii) an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code (or corresponding provisions of any successor law), (iii) an individual retirement account or an individual retirement annuity within the meaning of Section 408 of the Internal Revenue Code (or corresponding provisions of any successor law), including a simplified employee pension plan, or (iv) a Roth individual retirement account within the meaning of Section 408A of the Internal Revenue Code (or corresponding provisions of any successor law).

(f) Monies paid into or, to the extent payments out are applied to tuition or other qualified higher education expenses at eligible educational institutions, as defined in Section 529 of the Internal Revenue Code or corresponding provisions of any successor law, monies paid out of the assets of and the income from any validly existing qualified tuition program authorized under Section 529 of the Internal Revenue Code or corresponding provisions of any successor law, including, but not limited to, the Mississippi Prepaid Affordable College Tuition (MPACT) Program established under Sections 37-155-1 through 37-155-27 and the Mississippi Affordable College Savings (MACS) Program established under Sections 37-155-101 through 37-155-125.

(g) The assets of a health savings account, including any interest accrued thereon, established pursuant to a health savings account program as provided in the Health Savings Accounts Act (Sections 83-62-1 through 83-62-9).

(h) In addition to all other exemptions listed in this section, there shall be an additional exemption of property having a value of Fifty Thousand Dollars ($50,000.00) of whatever type, whether real, personal or mixed, tangible or intangible, including deposits of money, available to any Mississippi resident who is seventy (70) years of age or older.

(i) An amount not to exceed Five Thousand Dollars ($5,000.00) of earned income tax credit proceeds.

(j) An amount not to exceed Five Thousand Dollars ($5,000.00) of federal tax refund proceeds.

(k) An amount not to exceed Five Thousand Dollars ($5,000.00) of state tax refund proceeds.

(*l*) Subject to the provisions of Section 27-7-1003(2), the assets of a catastrophe savings account, including any interest accrued thereon, established under Sections 27-7-1001 through 27-7-1007.

(m) Nothing in this section shall in any way affect the rights or remedies of the holder or owner of a statutory lien or voluntary security interest.

HISTORY: Codes, Hutchinson's 1848, ch. 62, art. 1 (23); 1857, ch. 61, art. 280; 1871, § 2131; 1880, § 1244; 1892, § 1963; 1906, § 2139; Hemingway's 1917, § 1812; 1930, § 1755; 1942, § 307; Laws, 1932, ch. 138; Laws, 1948, ch. 232, § 1; Laws, 1962, 1st Ex Sess. ch. 7; Laws, 1966, ch. 318, § 1; Laws, 1980, ch. 540, § 1; Laws, 1981, ch. 469, § 3; Laws, 1987, ch. 473; Laws, 1991, ch. 479, § 7; Laws, 1995, ch. 565, § 1; Laws, 2002, ch. 594, § 1; Laws, 2006, ch. 595, § 1; Laws, 2008, ch. 557, § 1; Laws, 2015, ch. 457, § 6, eff from and after Jan. 1, 2015; Laws, 2020, ch. 326, § 1, eff from and after July 1, 2020.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the fourth line of paragraph (d). The words "income tax on benefits received from a pension or other retirement plan so used in this paragraph" was changed to "income tax on benefits received from a pension or other retirement plan. As used in this paragraph." The Joint Committee ratified the correction at its June 3, 2003, meeting.

Editor's Notes — Laws of 1981, ch. 469, § 6 provides as follows:

"SECTION 6. The provisions of this act shall apply only to attachment, execution or garnishment proceedings instituted on or after the effective date of this act [April 7, 1981], and shall not defeat, extinguish or render void any claim or defense existing with respect to attachment, execution or garnishment proceedings instituted prior to the effective date of this act."

Amendment Notes — The 2020 amendment, in (e), added (iv) and made a related change.

Cross References — Cases in which attachment is remedy, see § 11-33-1.

What writ is to be served upon and what is bound by levy, see § 11-33-23.

Answer by person summoned as garnishee, see § 11-35-25.

Garnishee suggesting exemptions, see § 11-35-33.

Exemption of city employees retirement fund, see § 21-29-51.

Exemption of disability and relief fund for firemen and policemen, see § 21-29-257.

Exemption of public employees' retirement system funds, see § 25-11-129.

Exemptions from ad valorem taxation generally, see §§ 27-31-1 et seq.

Exemption of property from execution sale, see § 43-33-33.

Exemption of property of municipality, see § 43-35-25.

Exemption of employee trust plan, see § 71-1-43.

Exemption of unemployment compensation benefits, see § 71-5-539.

Fire insurance generally, see §§ 83-13-5 et seq.

Federal exemptions state residents prohibited from taking, see § 85-3-2.

Descent of exempt property, see §§ 91-1-19 et seq.

Federal Aspects— Employee Retirement Income Security Act of 1974, see 29 USCS §§ 1001 et seq.

Sections 401, 403, 408, and 457 of the Internal Revenue Code, referred to in (e), are codified at 26 USCS §§ 401, 403, 408, and 457.

Section 529 of the Internal Revenue Code, referred to in (f), is codified at 26 USCS § 529.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Exempt personal property generally.
3. Tools equipment, etc., of trade or profession.
4. Animals.
5. Wages.
6. Proceeds derived from personal property.
7. Selection of exempt personal property.
8. Waiver of exemption.

1. In general.

Bankruptcy debtor's exemption claims in his simplified employee pension-individual retirement accounts (SEP-IRA) extended only to amounts reasonably necessary for support of debtor as well as of any dependents. In re Henderson, 167 B.R. 67, 1993 Bankr. LEXIS 2177 (Bankr. N.D. Miss. 1993).

A debtor in Mississippi may utilize Section 522(f)(2) of the Bankruptcy Code to avoid a voluntary nonpurchase-money security interest that impairs an exemption to which the debtor would be entitled but for the exclusionary language of subsection (e) of this section. In re Kennedy, 139 B.R. 389, 1992 Bankr. LEXIS 666 (Bankr. N.D. Miss. 1992).

Under the statute, the proceeds of a voluntary sale of a homestead are exempt under all circumstances, regardless of the vendor's continuing to be a householder, or his acquiring another homestead, or the intent with which he keeps the proceeds. Davis v. Lammons, 246 Miss. 624, 151 So. 2d 907, 1963 Miss. LEXIS 487 (Miss. 1963).

Although an exemption is a personal privilege and as a general rule cannot be taken advantage of, except by the execution or attachment debtor, an exception is that his wife can make the claim for him. Reid v. Halpin, 185 Miss. 396, 188 So. 310, 1939 Miss. LEXIS 165 (Miss. 1939).

Laws granting exemption from levy and sale under execution are construed liberally in favor of the exemptionist. Bank of Gulfport v. O'Neal, 86 Miss. 45, 38 So. 630, 1905 Miss. LEXIS 66 (Miss. 1905); Dreyfus v. Barton, 98 Miss. 758, 54 So. 254, 1910 Miss. LEXIS 122 (Miss. 1910).

The section [Code 1942, § 307] has no application to a surviving partner who is administering the partnership assets. Lance v. Calhoun, 85 Miss. 375, 37 So. 1014, 1904 Miss. LEXIS 171 (Miss. 1904).

Legislature cannot increase exemption so as to render additional property exempt from liability for existing debts. Johnson v. Fletcher, 54 Miss. 628, 1877 Miss. LEXIS 61 (Miss. 1877).

2. Exempt personal property generally.

Hospital's probated claim, while not invalid, was properly denied as uncollectable because the only asset of the estate was insurance proceeds received as a result of an unrelated motor-vehicle accident; after payment of attorneys' fees, the balance remaining in the estate was exempt from creditors. In re Estate of Matute, 293 So. 3d 224, 2020 Miss. LEXIS 43 (Miss. 2020).

In the event that the term "motor vehicles" was not clear and unambiguous so that the court should employ the canons of statutory construction to interpret the meaning of "motor vehicles" in Miss. Code Ann. § 85-3-1(a), the court found as follows: (1) in other Mississippi statutes, the ordinary use of "motor vehicles" included motorcycles, (2) the Mississippi Legislature used the term "motor vehicles" in § 85-3-1(a) without adding language to include some types of motor vehicles but not others, (3) the sections of the Mississippi Code that discussed motorcycles demonstrated that for the purposes of traffic regulation, conveyance, registration, and taxation, the Mississippi Legislature considered motorcycles to be a type of motor vehicles. Without indication to the contrary, there was no reason to presume that the Mississippi Legislature had any different intent with respect to its treatment of motorcycles under the Exemption Statute. In re Clemons, 441 B.R. 519, 2010 Bankr. LEXIS 2943 (Bankr. N.D. Miss. 2010).

Term "motor vehicles" is clear and unambiguous and should be given its plain meaning; furthermore, (i) the plain meaning of "motor vehicles" includes motorcycles, (ii) if the Mississippi Legislature had desired to narrow the types of "motor vehicles" affected by the Exemption Statute, Miss. Code Ann. § 85-3-1, it certainly knew how to add restricting language to accomplish that goal, and (iii) accordingly, motorcycles fall within the category "motor vehicles" and as such are a type of tangible personal property included in § 85-3-1. A debtor may, therefore, claim a motorcycle as exempt property pursuant to § 85-3-1. In re Clemons, 441 B.R. 519, 2010 Bankr. LEXIS 2943 (Bankr. N.D. Miss. 2010).

State exemption statute and 11 USCS § 522(f) must be applied together, thus, debtors seeking to avoid nonpurchase-money security interests under 11 USCS § 522(f)(B) in "household goods" under Miss. Code Ann. § 85-3-1(a)(vi) were limited to the definition of "household goods" in the Mississippi statute, such that for example, a debtor could avoid a lien on only one television, but Miss. Code Ann. § 85-3-1(a)(iv) did expand the number of items that could be eligible for judicial lien avoidance pursuant to 11 USCS § 522(f)(1)(A). In re McCoy, 2003 Bankr. LEXIS 374 (Bankr. N.D. Miss. Apr. 23, 2003).

As a result of the 1995 amendment limiting the range of personal property that may be exempted from seizure, a debtor is prohibited from claiming a mobile home as exempt personal property. Cobbins v. Henderson (In re Cobbins), 227 F.3d 302, 2000 U.S. App. LEXIS 23862 (5th Cir. Miss. 2000).

Bank deposit or account was in nature of "intangible" personal property, which could not be exempted from garnishment under Mississippi statute authorizing debtor to claim exemption only in tangible personal property not exceeding $10,000 in value. Cartwright v. Deposit Guar. Nat'l Bank, 675 So. 2d 847, 1996 Miss. LEXIS 302 (Miss. 1996).

Household goods which would normally be exempt under this section from seizure in bankruptcy proceedings, are not protected from holder of nonpossessory, nonpurchase-money security interest in goods by virtue of this section or federal exemption provisions. In re Fox, 902 F.2d 411, 1990 U.S. App. LEXIS 8925 (5th Cir. Miss. 1990).

Chapter 7 debtor could not avoid nonpossessory, nonpurchase money security interest in household goods; under exemption scheme, household goods which are subject to voluntary security interest are not subject to exemption. In re Eiland, 95 B.R. 41, 1988 Bankr. LEXIS 2267 (Bankr. N.D. Miss. 1988).

A decree appointing a receiver impliedly limits the right of the receiver to property which is not exempt from execution. Levy v. T. R. Rosell & Co., 82 Miss. 527, 34 So. 321, 1903 Miss. LEXIS 154 (Miss. 1903).

A possessory claim is sufficient to entitle a debtor to the exemption. Stein v. Hamblett, 66 Miss. 112, 5 So. 524, 1888 Miss. LEXIS 72 (Miss. 1888).

Money due for damage to exempt property is not itself exempt. Johnson v. Edde, 58 Miss. 664, 1881 Miss. LEXIS 21 (Miss. 1881).

3. Tools equipment, etc., of trade or profession.

A printing-press is not exempt as the tool of a mechanic. Frantz v. Dobson, 64 Miss. 631, 2 So. 75, 1887 Miss. LEXIS 83 (Miss. 1887).

A dentist is not a mechanic within the statute. Whitcomb v. Reid, 31 Miss. 567, 1856 Miss. LEXIS 119 (Miss. 1856).

4. Animals.

Two horses used by business man in driving from home to place of business, in making pleasure trips with family, and occasionally making business trips, not work horses. Tishomingo Sav. Institution v. Young, 87 Miss. 473, 40 So. 9, 1905 Miss. LEXIS 167 (Miss. 1905).

Statute (Acts 1875, p. 122) increasing exemption from one horse to two horses did not protect additional horse from liability to judgment enrolled before its passage. Johnson v. Fletcher, 54 Miss. 628, 1877 Miss. LEXIS 61 (Miss. 1877).

5. Wages.

The 1966 amendment to § 85-3-1(10)(a) required the garnishee to withhold funds from an employee's wages up until the return day of the writ or until the full amount of the judgment had been collected, whichever occurred first. Leasy v. Zollicoffer, 389 So. 2d 1378, 1980 Miss. LEXIS 2111 (Miss. 1980).

In garnishment proceedings, where part of defendant's salary was exempt from garnishment because paid in advance in a larger amount than would, under statute exempting $50 a month, have been exempt if none of the salary had been paid in advance, remainder of such salary held not subject to statutory exemption. Peoples Bank v. Gore, 178 Miss. 216, 172 So. 506, 1937 Miss. LEXIS 192 (Miss. 1937).

The exemption of a laborer's wages is conferred upon heads of families only. Lipp v. Genovese, 125 N.Y.S. 978, 69 Misc. 357, 1910 N.Y. Misc. LEXIS 568 (N.Y. App. Term 1910).

Money collected by an attorney on a claim due his client for wages exempt under this section [Code 1942, § 307] is not exempt from the attorney's lien. Halsell v. Turner, 84 Miss. 432, 36 So. 531, 1904 Miss. LEXIS 60 (Miss. 1904).

Exemptions are highly favored by the law, and the protection may not be defeated by the intention or neglect of the garnishee; Hence, a garnishee who pays a judgment rendered against it as such, and as such takes an assignment of the judgment on which it is issued, remains liable to the judgment debtor where the debt garnished was exempt, as the monthly wages of the head of a family, and the garnishee fails to suggest the claim of exemption. City of Laurel v. Turner, 80 Miss. 530, 31 So. 965, 1902 Miss. LEXIS 281 (Miss. 1902).

The price due a contractor for building a house, although he may do some unascertained portion of the work himself, is not wages within the meaning of this section [Code 1942, § 307]. Heard v. Crum, 73 Miss. 157, 18 So. 934, 1895 Miss. LEXIS 121 (Miss. 1895).

The exemption of the wages of a laborer, being the head of a family, was designed for the protection of the debtor's family and cannot be given a construction that would defeat its beneficent purpose. Hence, while the laborer being the head of a family and working for wages at eighty-one dollars per month, payable monthly, he is entitled to demand and receive his wages as they fall due monthly, notwithstanding the garnishment of his employer, and where such garnishment is returnable several months after the services thereof, neither the amount then due, when less than one hundred dollars, nor such other wages as the debtor may earn during the interval preceeding judgment under the same contract with garnishee, can be subjected by a writ of garnishment and the garnishee should be discharged. Chapman v. Berry, 73 Miss. 437, 18 So. 918, 1895 Miss. LEXIS 107 (Miss. 1895).

The exemption of the wages of a laborer, the head of a family, is not of one hundred dollars yearly or monthly, but exists as often as wages within the amount are sought to be subjected to legal process. Chandler v. White, 71 Miss. 161, 14 So. 454, 1893 Miss. LEXIS 176 (Miss. 1893).

The exemption of wages due a laborer who is a citizen of the state, for work done here, cannot be defeated by garnishing the debtor, a railroad company in another state, it having a line of railroad there as well as in this state. Both debtor and creditor being residents of this state, the court will give effect to our exemption laws regardless of the laws of such other state. Illinois C. R. Co. v. Smith, 70 Miss. 344, 12 So. 461, 1892 Miss. LEXIS 129 (Miss. 1892), overruled in part, Southern P. R. Co. v. A. J. Lyon & Co., 54 So. 784 (Miss. 1911), overruled, Southern P. R. Co. v. A. J. Lyon & Co., 99 Miss. 186, 54 So. 728, 1911 Miss. LEXIS 188 (Miss. 1911).

The "laborer" whose wages to the amount of one hundred dollars are exempt from garnishment, is one who subsists by physical toil in distinction from one who subsists by professional skill. Where physical toil is the main ingredient of services rendered, although directed and made more valuable by skill, the person performing it is a laborer within the meaning of the statute. Williams v. Link, 64 Miss. 641, 1 So. 907, 1887 Miss. LEXIS 85 (Miss. 1887).

The statute denies to creditors the fruits of one's toil not exceeding one hundred dollars, that this compensation for labor may go to supply the wants of himself and family. Williams v. Link, 64 Miss. 641, 1 So. 907, 1887 Miss. LEXIS 85 (Miss. 1887).

The wages of a laborer engaged as a clerk in a mercantile store, to the amount of one hundred dollars, are exempt from garnishment by virtue of the provision of this statute. Williams v. Link, 64 Miss. 641, 1 So. 907, 1887 Miss. LEXIS 85 (Miss. 1887).

6. Proceeds derived from personal property.

The statute exempts the proceeds of the sale of exempt property, but in order to obtain such exemption, the proceeds must come from the sale of property which, at the time of sale, is actually a homestead meeting the requirements of the statute. Patterson v. Adams, 245 So. 2d 13, 1971 Miss. LEXIS 1348 (Miss. 1971).

Where a husband and wife, having occupied certain property as their homestead, acquired new property, intending to live there permanently and make it their homestead, and moved to the new property, vacating the old homestead, the former homestead was not exempt from the claim of a creditor, and the proceeds of the sale of the former homestead which took place two weeks after the move to the new property, were not exempt. Patterson v. Adams, 245 So. 2d 13, 1971 Miss. LEXIS 1348 (Miss. 1971).

Where the evidence established that the funds paid into court in a garnishment proceeding were for the purchase price of raw milk sold by the defendants to a dairy corporation, the defendants were not employees of the corporation and the funds were not for personal services, and consequently the tenth subsection of Code 1942 § 307 was inapplicable. Beam v. Greenville Mills, 215 So. 2d 253, 1968 Miss. LEXIS 1345 (Miss. 1968).

Where debtor could claim exemption of specific articles sold under attachment, he is entitled to proceeds of articles in class bringing highest price. Anderson v. Dever, 109 Miss. 235, 68 So. 166, 1915 Miss. LEXIS 141 (Miss. 1915).

Paragraph (b) of tenth clause of this section [Code 1942, § 307] is inapplicable where no sale of property and no attempt to subject proceeds of sale to creditor's debt. Bennett Bros. v. Dempsey, 94 Miss. 406, 48 So. 901, 1908 Miss. LEXIS 55 (Miss. 1908).

Money due for damage to exempt property is not itself exempt. Johnson v. Edde, 58 Miss. 664, 1881 Miss. LEXIS 21 (Miss. 1881).

7. Selection of exempt personal property.

Exemptionist may select personal property of $250 in value out of any that he has, regardless of kind and character; could select truck worth less than $250 in lieu of property exempted by general provision. Hartfield v. Anderson, 156 Miss. 724, 126 So. 830, 1930 Miss. LEXIS 219 (Miss. 1930).

The right of selection is not affected by the fraud of the debtor. Moseley v. Anderson, 40 Miss. 49, 1866 Miss. LEXIS 47 (Miss. 1866).

8. Waiver of exemption.

Waiver of exemption in note is void. Teague v. Weeks, 89 Miss. 360, 42 So. 172, 1906 Miss. LEXIS 15 (Miss. 1906).

OPINIONS OF THE ATTORNEY GENERAL

It is within the discretion of the levying officer to make a good faith determination as to what property would be considered exempt under this section. Hooks, April 5, 1996, A.G. Op. #96-0163.

RESEARCH REFERENCES

ALR.

Interest of vendee under executory contract as subject to execution, judgment lien, or attachment. 1 A.L.R.2d 727.

Exemption of insurance proceeds as available to assignee of policy. 1 A.L.R.2d 1031.

Endowment policy as life insurance within exemption law. 30 A.L.R.2d 751.

Exemption of motor vehicle from seizure for debt. 37 A.L.R.2d 714.

Statutory provision that specified fund or property shall be "exempt from taxation," "exempt from any tax," or the like, as exempting such property from estate or succession taxes. 47 A.L.R.2d 999.

Value of room and board furnished to servant as included in total salary or earnings for purpose of statute exempting wages. 51 A.L.R.2d 947.

Wife as head of family within homestead or other property exemption provision. 67 A.L.R.2d 779.

Validity of contractual stipulation or provision waiving debtor's exemption. 94 A.L.R.2d 967.

Construction and effect of statutory exemptions of proceeds of workmen's compensation awards. 31 A.L.R.3d 532.

What is "necessary" furniture entitled to exemption from seizure for debt. 41 A.L.R.3d 607.

Choice of law as to exemption of property from execution. 100 A.L.R.3d 1235.

Search and seizure: what constitutes abandonment of personal property within rule that search and seizure of abandoned property is not unreasonable-modern cases. 40 A.L.R.4th 381.

Enforcement of claim for alimony or support, or for attorneys' fees and costs incurred in connection therewith, against exemptions. 52 A.L.R.5th 221.

Construction and Application of Exemption for Firearms under State Law. 46 A.L.R.6th 401.

Purchase of Annuity by Debtor as Fraud on Creditors. 74 A.L.R.6th 549.

Avoidance under 11 USCS § 522(f)(1) of the Bankruptcy Code of 1978 of judicial lien on debtor's exempt personal property. 47 A.L.R. Fed. 937.

Avoidance under 11 USCS § 552(f)(2) of the Bankruptcy Code of 1978 of nonpossessory, nonpurchase-money security interest in debtor's exempt personal property. 55 A.L.R. Fed. 353.

Individual retirement accounts as exempt property in bankruptcy. 133 A.L.R. Fed. 1.

Am. Jur.

31 Am. Jur. 2d, Exemptions §§ 28 et seq.

Law Reviews.

Montague, Are retirement funds exempt from the reach of creditors in Mississippi? 10 Miss. C. L. Rev 125, Spring, 1990.

Comment: ERISA and bankruptcy: can creditors reach a Chapter 7 debtor's pension?. 61 Miss. L. J. 389 (Fall 1991).

§ 85-3-2. Certain federal exemptions prohibited.

In accordance with the provisions of Section 522(b) of the Bankruptcy Reform Act of 1978, as amended (11 U.S.C.S. 522(b)), residents of the State of Mississippi shall not be entitled to the federal exemptions provided in Section 522(d) of the Bankruptcy Reform Act of 1978, as amended (11 U.S.C.S. 522(d)). Nothing in this section shall affect the exemptions given to individuals of Mississippi by the Constitution and statutes of the State of Mississippi.

HISTORY: Laws, 1991, ch. 614, § 1, eff from and after July 1, 1991.

JUDICIAL DECISIONS

1. In general.

Through this section, the State of Mississippi has elected to "opt-out" of the federal exemptions scheme set forth in Section 522(d) of the Bankruptcy Code. In re Kennedy, 139 B.R. 389, 1992 Bankr. LEXIS 666 (Bankr. N.D. Miss. 1992).

§ 85-3-3. Execution or attachment of personal property; selection of exempt property.

Where an officer shall be about to levy an execution or attachment on personal property, some of which shall be claimed as exempt, he shall demand of the defendant that he make selection of such property as is exempt to him and in reference to which he has the right of selection; and the defendant shall then and there make his selection, or, failing to do so, the officer shall make it for him, and any selection so made shall be conclusive on the defendant.

HISTORY: Codes, 1892, § 1966; 1906, § 2142; Hemingway's 1917, § 1817; 1930, § 1761; 1942, § 313.

Cross References — What writ is to be served on and what is bound by levy, see § 11-33-23.

JUDICIAL DECISIONS

1. In general.

General release of joint tortfeasor does not discharge liability of other joint tortfeasor who is neither party to release nor pays consideration for it, notwithstanding language in release releasing "all others whatsoever," where parol evidence undisputedly establishes intent to release only tortfeasor who is party to it. Smith v. Falke, 474 So. 2d 1044, 1985 Miss. LEXIS 2176 (Miss. 1985).

Failure of wife to sign deed conveying all timber on all of grantor's land without reserving any exemption made deed void as to homestead. Robert G. Bruce Co. v. Spears, 181 Miss. 786, 181 So. 333, 1938 Miss. LEXIS 119 (Miss. 1938).

Under this section where, though defendant claimed the property to be exempt, the officer made no request that he make selection, and no notice was given to him to make it, defendant did not, by failing to select the property, forfeit his right to the exemption. Bank of Gulfport v. O'Neal, 86 Miss. 45, 38 So. 630, 1905 Miss. LEXIS 66 (Miss. 1905).

A defendant whose property is levied upon under execution does not waive his right to claim his exemptions by asserting that the property belongs to his wife. Bank of Gulfport v. O'Neal, 86 Miss. 45, 38 So. 630, 1905 Miss. LEXIS 66 (Miss. 1905).

OPINIONS OF THE ATTORNEY GENERAL

Under Section 85-3-3, when an officer is about to levy an execution or attachment, the officer should inform the defendant that he has a right to select certain personal property as exempt from execution. The officer should then demand that the defendant select such property that he wishes to claim as exempt. If the defendant refuses or fails to make a selection, the officer shall make the selection for him. Evans, April 26, 1996, A.G. Op. #96-0248.

RESEARCH REFERENCES

Am. Jur.

31 Am. Jur. 2d, Exemptions §§ 300, 301.

10 Am. Jur. Pl & Pr Forms (Rev), Exemptions, Forms 1 et seq. (notice, schedule, and selection).

§ 85-3-4. Execution or attachment of wages, salaries or other compensation; limitations.

(1) The wages, salaries or other compensation of laborers or employees, residents of this state, shall be exempt from seizure under attachment, execution or garnishment for a period of thirty (30) days from the date of service of any writ of attachment, execution or garnishment.

(2) After the passage of the period of thirty (30) days described in subsection (1) of this section, the maximum part of the aggregate disposable earnings (as defined by Section 1672(b) of Title 15, United States Code Annotated) of an individual that may be levied by attachment, execution or garnishment shall be:

(a) In the case of earnings for any workweek, the lesser amount of either,

(i) Twenty-five percent (25%) of his disposable earnings for that week, or

(ii) The amount by which his disposable earnings for that week exceed thirty (30) times the federal minimum hourly wage (prescribed by section 206 (a)(1) of Title 29, United States Code Annotated) in effect at the time the earnings are payable; or

(b) In the case of earnings for any period other than a week, the amount by which his disposable earnings exceed the following "multiple" of the federal minimum hourly wage which is equivalent in effect to that set forth in paragraph (a)(ii) of this subsection (2): The number of workweeks, or fractions thereof multiplied by thirty (30) multiplied by the applicable federal minimum wage.

(3)(a) The restrictions of subsections (1) and (2) of this section do not apply in the case of:

(i) Any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by state law, which affords substantial due process, and which is subject to judicial review.

(ii) Any debt due for any state or local tax.

(b) Except as provided in subparagraph (b)(iii) of this subsection (3), the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed:

(i) Where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), fifty percent (50%) of such individual's disposable earnings for that week; and

(ii) Where such individual is not supporting such a spouse or dependent child described in subparagraph (b)(i) of this subsection (3), sixty percent (60%) of such individual's disposable earnings for that week;

(iii) With respect to the disposable earnings of any individual for that workweek, the fifty percent (50%) specified in subparagraph (b)(i) of this subsection (3) shall be deemed to be fifty-five percent (55%) and the sixty percent (60%) specified in subparagraph (b)(ii) of this subsection (3) shall be deemed to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the period of twelve (12) weeks which ends with the beginning of such workweek.

HISTORY: Laws, 1980, ch. 540, § 2; Laws, 1981, ch. 469, § 4, eff from and after passage (approved April 7, 1981).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in internal statutory references by substituting "paragraph (a)(ii) of this subsection (2)" for "subparagraph (a)(ii) of this subsection (2)" in subsection (2), and "subsections (1) and (2)" for "subsection (1) and (2)" in subsection (3)(a). The Joint Committee ratified the correction at its August 20, 2021, meeting.

Editor's Notes — Section 6 of Chapter 469, Laws of 1981, provides as follows:

"SECTION 6. The provisions of this act shall apply only to attachment, execution or garnishment proceedings instituted on or after the effective date of this act [April 7, 1981], and shall not defeat, extinguish or render void any claim or defense existing with respect to attachment, execution or garnishment proceedings instituted prior to the effective date of this act."

Cross References — Writ of garnishment binding nonexempt percentage of disposable earnings, see § 11-35-23.

Inapplicability of wages to provision permitting debtor to select tangible personal property of any kind for exemption in lieu of certain items specifically exempted by law, see § 85-3-1.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Obligee no longer has custody.

1. In general.

The 25 percent restriction on wage garnishment set forth in § 85-3-4(2)(a) applied to the garnishment of a father's wages in satisfaction of a judgment for past due child support, even though the 25 percent restriction does not apply in cases where the judgment is for the support of another person, where the mother no longer had custody of the children because custody had been placed in the father. Sorrell v. Borner, 593 So. 2d 986, 1991 Miss. LEXIS 593 (Miss. 1991).

2. Obligee no longer has custody.

Under Miss. Ann. § 85-3-4(2)(a)(i), the trial court erred in ordering 55 percent, rather than 25 percent, withheld from a father's disposable income, because when a judgment was awarded to the mother for past-due child support, she no longer had custody of the child. Reasor v. Jordan, 110 So. 3d 307, 2013 Miss. LEXIS 144 (Miss. 2013).

OPINIONS OF THE ATTORNEY GENERAL

Statute setting maximum amount of earnings that may be levied by garnishment at "amount by which employee's disposable earnings for week exceed thirty times the federal minimum hourly wage" contemplated possibility that federal minimum wage might be changed and that withholding amount should be recalculated accordingly. Shepard, July 3, 1991, A.G. Op. #91-0450.

§ 85-3-5. Execution or attachment of personal property; plaintiff's indemnity bond; liability of officer.

If any sheriff or other officer shall levy or be about to levy an execution or attachment on any personal property claimed as exempt, and a doubt shall arise as to the liability of the property to be sold, he may demand of the plaintiff a bond, with sufficient sureties, payable to such officer, in a sufficient penalty, conditioned to indemnify and save harmless the officer against all damages which he may sustain in consequence of the seizure or sale of the property, and to pay the defendant all damages which he may sustain in consequence of the seizure or sale; and if such bond be not given, after reasonable notice, in writing, from the officer to the plaintiff, his agent or attorney, that it is required, the officer may refuse to levy, or, having levied, may dismiss the levy; but if the required bond be given, the officer shall seize and sell or dispose of the property according to the command of the process in his hands, and shall return the bond with the execution or attachment. If an officer shall seize personal property exempt from execution, he shall be liable to an action at the suit of the owner for all damages sustained thereby, unless he have taken an indemnifying bond.

HISTORY: Codes, 1857, ch. 61, art. 280 (8); 1871, §§ 2132, 2134; 1880, §§ 1245, 1247; 1892, §§ 1967, 1969; 1906, §§ 2143, 2145; Hemingway's 1917, §§ 1818, 1820; 1930, §§ 1762, 1764; 1942, §§ 314, 316.

Cross References — Bond of creditor, see § 11-33-11.
Levy upon personal property, see § 13-3-125.
Requirement of bond of indemnity, see § 13-3-157.
Remedy on bond of indemnity, see § 13-3-159.

JUDICIAL DECISIONS

ANALYSIS

1. In general; validity.
2. Failure of officer to return bond.
3. Refusal of officer to levy execution; reasonable notice.

1. In general; validity.

Where sheriff had no right to demand indemnity bond, bond taken by him not valid. Chenault v. W. T. Adams Mach. Co., 98 Miss. 326, 53 So. 629, 1910 Miss. LEXIS 65 (Miss. 1910).

Where an officer has levied an execution on property, which is claimed as exempt and demands an indemnifying bond of the plaintiff under Code 1892, § 1967 but by mistake accepts a bond under another section (Code 1892, § 3482) the conditions of the two statutory bonds being different, and proceeds and sells the property, the bond actually taken will be treated in any suit thereon as though properly conditioned under the statute (Code 1892, § 946) providing that a bond in any legal proceeding which has had the effect of a bond conditioned according to law shall be treated as if properly conditioned. Bank of Gulfport v. O'Neal, 86 Miss. 45, 38 So. 630, 1905 Miss. LEXIS 66 (Miss. 1905).

Where an idemnifying bond has been taken under this section [Code 1942, § 314], title to the property in the plaintiff's usee, the defendant in execution, is essential to the maintenance of a suit upon such indemnifying bond and a plaintiff's usee who has conveyed the property to another is without title, although the conveyance has been adjudged fraudulent as to his creditors. Williamson v. Wilkinson, 81 Miss. 503, 33 So. 282, 1902 Miss. LEXIS 172 (Miss. 1902).

2. Failure of officer to return bond.

Failure of officer to return indemnity bond along with return of execution and delay in returning same for three or four years and not until suit instituted upon it, invalidated the bond. New Albany Wholesale Grocery Co. v. Wells, 114 Miss. 144, 74 So. 817, 1917 Miss. LEXIS 14 (Miss. 1917).

3. Refusal of officer to levy execution; reasonable notice.

Where the sheriff wrote to a judgment creditor in Illinois two weeks before the first day of the court, demanding a bond to indemnify him against liability for levying an execution and advising such creditor that the execution would be held unexecuted until such bond was furnished, and the creditor failed to answer, two weeks was not an unreasonable time for the sheriff to wait for the creditor to furnish the bond so as to charge the sheriff with liability for failure to return the execution on the return day thereof. W. T. Rawleigh Co. v. Foxworth, 194 Miss. 205, 11 So. 2d 919, 1943 Miss. LEXIS 56 (Miss. 1943).

OPINIONS OF THE ATTORNEY GENERAL

Under this section, an officer may demand the plaintiff post a bond to protect the officer from liability when there is a question as to whether the property is exempt from execution. If a defendant claims an exemption for certain personal property and the sheriff has a question as to whether such an exemption exists, the sheriff may demand the plaintiff post a bond prior to seizure of the property or if the property has already been seized then the sheriff may require the plaintiff to post a bond prior to the sale of the property. Hooks, April 5, 1996, A.G. Op. #96-0163.

RESEARCH REFERENCES

Am. Jur.
31 Am. Jur. 2d, Exemptions §§ 300, 301.

§ 85-3-7. Execution or attachment of personal property; defendant may sue on plaintiff's indemnity bond.

After the execution of such bond, the defendant in the execution or attachment shall be barred of any claim against the officer so seizing or selling the property, unless the obligors in the bond be or become insolvent, or the bond be otherwise invalid; and the defendant in execution or attachment may sue on the bond in the name of the payee, for his use, and recover double damages for the loss he has sustained by the seizure or sale of the property.

HISTORY: Codes, 1871, § 2133; 1880, § 1246; 1892, § 1968; 1906, § 2144; Hemingway's 1917, § 1819; 1930, § 1763; 1942, § 315.

Cross References — Remedy on bond of indemnity, see § 13-3-159.

JUDICIAL DECISIONS

1. In general.

To maintain an action on indemnifying bond hereunder, it is essential that title to the property levied upon be in the defendant in execution, and where he had transferred title to another, although to defraud creditors, no action could be maintained on the bond. Williamson v. Wilkinson, 81 Miss. 503, 33 So. 282, 1902 Miss. LEXIS 172 (Miss. 1902).

The defendant may elect the remedy provided by statute, or he may sue on the indemnifying bond where one is given. Woolner v. Spalding, 65 Miss. 204, 3 So. 583, 1887 Miss. LEXIS 38 (Miss. 1887).

The effect of the law is to transfer to the obligors therein the responsibility which at common law rested upon the sheriff for illegal seizure of property not liable to the writ; This substituted remedy is in lieu of any action against the sheriff, unless the obligors on the bond shall be or become insolvent, or the levy be otherwise invalid. Swain v. Alcorn, 50 Miss. 320, 1874 Miss. LEXIS 61 (Miss. 1874).

§ 85-3-9. Execution or attachment of personal property; replevy by defendant.

Any defendant whose exempt property is seized may replevy the same by giving bond with sureties, to be approved by the officer seizing it, in double the value of the property, payable to the plaintiff in the execution or attachment, and conditioned to have the property forthcoming, to abide the event of an issue to be made up at the return term of the process; and in such case the officer shall deliver the property to the defendant, and return the bond with the process; and at the return term an issue shall be made up under the direction of the court, and tried, as in case of the trial of the right of property levied upon and claimed by a third person, and if found for defendant he shall recover costs, damages, and a penalty of Twenty Dollars ($20.00) of the plaintiff and his sureties on the bond of indemnity, if any have been given; but if found for plaintiff, he shall have judgment against the obligors in the replevy bond for the value of the property and costs of suit.

HISTORY: Codes, 1857, ch. 61, art. 280 (8); 1871, § 2134; 1880, § 1247; 1892, § 1969; 1906, § 2145; Hemingway's 1917, § 1820; 1930, § 1764; 1942, § 316.

JUDICIAL DECISIONS

1. In general.

Judgment debtor replevying property as exempt cannot recover attorney's fees, in absence of fraud, wilful wrong, oppression, or malice. Clayton-Hughes Co. v. Glass, 138 Miss. 839, 103 So. 501, 1925 Miss. LEXIS 91 (Miss. 1925).

The exemptionist is not confined to the remedy given by the statute. Moseley v. Anderson, 40 Miss. 49, 1866 Miss. LEXIS 47 (Miss. 1866).

§ 85-3-11. Proceeds of life insurance policy; named beneficiaries; certain proceeds of policies exempt from liability for debts of person insured.

(1) Except as provided in subsection (2), all proceeds of a life insurance policy including cash surrender and loan values, shall inure to the party or parties named as the beneficiaries thereof, free from all liability for the debts of the person whose life was insured, even though such person paid the premium thereon. In addition, all proceeds, including cash surrender and loan values, of a policy of life insurance owned by or assigned to another, shall inure to the beneficiary or beneficiaries named therein, subject to terms of any assignment, free from all liability for debts of the person whose life was insured.

(2)(a) The exemption authorized in subsection (1) shall not apply to that portion of the cash surrender value or loan value of any life insurance policy which exceeds the sum of Fifty Thousand Dollars ($50,000.00) as a result of premiums paid or premium deposits or other payments made within twelve (12) months of issuance of a writ of seizure, attachment, garnishment or other process or the filing of a voluntary or involuntary bankruptcy proceeding under the United States Code.

(b) The amount of any premiums for the insurance paid with intent to defraud creditors, with interest thereon, shall inure to the benefit of such creditors from the proceeds of the policy; but the insurer issuing the policy shall be discharged of all liabilities thereon by payment of its proceeds in accordance with its terms, unless before such payment the insurer shall have written notice, by or on behalf of a creditor, of a claim to recover for transfer made or premiums paid with intent to defraud creditors with specification of the amount claimed.

(c) Notwithstanding any other provision to the contrary, a creditor possessing a valid assignment from the policy owner may recover from either the cash surrender value or the proceeds of the life insurance policy the amount secured by the assignment with interest.

HISTORY: Codes, 1880, § 1261; 1892, § 1964; 1906, § 2140; Hemingway's 1917, § 1813; 1930, § 1756; 1942, § 308; Laws, 1966, ch. 519, § 1; Laws, 1994, ch. 621, § 1, eff from and after July 1, 1994.

Cross References — Proceeds of life insurance policy not being subject to judicial process or assignment while in hands of company, see § 83-7-5.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Exempt insurance proceeds generally.
3. Policy payable to insured's estate.
4. Excess.

1. In general.

Statutes of exemption are to be liberally construed in favor of the beneficiary. United States Fidelity & Guaranty Co. v. Holt, 148 Miss. 885, 114 So. 818, 1927 Miss. LEXIS 87 (Miss. 1927).

This and the following section [Code 1942, §§ 308 and 309] do not provide cumulative exemptions, but should be so construed as to give each distributee, under the latter section [Code 1942, § 309], sufficient only to make the whole insurance money received by him on the life of the decedent equal to his ratable share of five thousand dollars. Cozine v. Grimes, 76 Miss. 284, 76 Miss. 294, 24 So. 197, 1898 Miss. LEXIS 79 (Miss. 1898).

The object of the section [Code 1942, § 308] is to secure the beneficiary of the policy the proceeds thereof, freed from liability for the debts of another, who has paid the premiums. Yale v. McLaurin, 66 Miss. 461, 5 So. 689, 1889 Miss. LEXIS 128 (Miss. 1889); United States Fidelity & Guaranty Co. v. Holt, 148 Miss. 885, 114 So. 818, 1927 Miss. LEXIS 87 (Miss. 1927).

2. Exempt insurance proceeds generally.

The cash surrender value of life insurance policies in which the insured reserved the right to change the beneficiary in each policy was not exempt from an action to garnish the funds to partially satisfy a decree for child support and alimony. Bonds v. Bonds, 409 So. 2d 704, 1982 Miss. LEXIS 1851 (Miss. 1982).

Proceeds of policy on guardian's life, payable to ward, as beneficiary, did not liquidate guardian's debt to ward, since such proceeds were free from all liabilities of the insured. United States Fidelity & Guaranty Co. v. Holt, 148 Miss. 885, 114 So. 818, 1927 Miss. LEXIS 87 (Miss. 1927).

However, proceeds of life policy on husband's life, payable to wife, were not exempt from judgment against her on note signed by both. Goza v. Provine, 140 Miss. 315, 105 So. 534, 1925 Miss. LEXIS 264 (Miss. 1925).

Defense of mistake is available where collector of lodge obtained note from widow for debt of deceased husband, by undue influence, telling her she could not collect insurance otherwise. Sykes v. Moore, 115 Miss. 508, 76 So. 538, 1917 Miss. LEXIS 225 (Miss. 1917), overruled, First Nat'l Bank v. Carver, 375 So. 2d 1198, 1979 Miss. LEXIS 2471 (Miss. 1979).

Proceeds of life insurance are owned by beneficiary and may not be subjected to insured's debts without beneficiary's consent whether insured was solvent or insolvent when paid premiums. Johnson v. Bacon, 92 Miss. 156, 45 So. 858, 1907 Miss. LEXIS 28 (Miss. 1907).

Life insurance to amount of $10,000, payable to any special beneficiary is exempted, and not subject to payment of any debts including premiums paid by insured while he was insolvent, and though paid with intent to hinder, delay and defraud his creditors. Johnson v. Bacon, 92 Miss. 156, 45 So. 858, 1907 Miss. LEXIS 28 (Miss. 1907).

The procurer of a life insurance policy designating another as the beneficiary has no power, without the beneficiary's consent, to transfer any interest in it to a third party by deed or will. Jackson Bank v. Williams, 77 Miss. 398, 26 So. 965, 1899 Miss. LEXIS 66 (Miss. 1899).

A life insurance policy designating a beneficiary is the property of its beneficiary the moment of its issuance, whether then delivered or not. Jackson Bank v. Williams, 77 Miss. 398, 26 So. 965, 1899 Miss. LEXIS 66 (Miss. 1899).

The proceeds of a life insurance policy payable to the wife of the insured, are not, upon his death, assets of his estate, but belong to the wife, and she and the sureties on her bond as administratrix of his estate, are not liable for a devastavit by reason of her having appropriated the whole amount, which included the sum of two thousand dollars in excess of the ten thousand dollars' exemption. Jones v. Patty, 73 Miss. 179, 18 So. 794, 1895 Miss. LEXIS 98 (Miss. 1895).

3. Policy payable to insured's estate.

Under the provisions of this section [Code 1942, § 308] where one insured his own life, the policy being made payable to himself, "his executors, administrators or assigns," he is the real beneficiary, and the proceeds, being liable to his debtors, cannot be claimed by his heirs as exempt. Rice v. Smith, 72 Miss. 42, 16 So. 417, 1894 Miss. LEXIS 91 (Miss. 1894).

4. Excess.

Creditors are entitled out of excess of insurance policy over $10,000 to amount paid for premiums on entire policy while insured insolvent, but not to whole amount of excess to satisfy their debts. Johnson v. Bacon, 92 Miss. 156, 45 So. 858, 1907 Miss. LEXIS 28 (Miss. 1907).

Creditors of a decedent who proceed by bill in equity against his wife and the sureties on her bond as administratrix of his estate, seeking a recovery for a devastavit in respect to so much of the proceeds of policies of insurance on his life, payable to her at his death, as exceeds the ten thousand dollars exempt by statute from liability for his debts, are entitled to no relief where the bill does not seek to subject the avails of the insurance for money illegally invested in the policies by the decedent. Jones v. Patty, 73 Miss. 179, 18 So. 794, 1895 Miss. LEXIS 98 (Miss. 1895).

RESEARCH REFERENCES

ALR.

Exemption of insurance proceeds as available to assignee of policy. 1 A.L.R.2d 1031.

Capacity of minor insured to effect a change of beneficiary. 14 A.L.R.2d 375.

Assignability of proceeds of claim for personal injury or death. 33 A.L.R.4th 82.

Who is "parent" entitled to proceeds of serviceman's group life insurance, where there are no named beneficiaries, and no surviving widow or children, under 38 USCS § 770(a). 73 A.L.R. Fed. 135.

Am. Jur.

31 Am. Jur. 2d, Exemptions §§ 168, 169, 179, 181, 187.

§ 85-3-13. Proceeds of life insurance policy; payable to executor; limits.

The proceeds of a life insurance policy not exceeding Fifty Thousand Dollars ($50,000.00) payable to the executor, or administrator, of the insured, shall inure to the heirs or legatees, freed from all liability for the debts of the decedent, except premiums paid on the policy by any one other than the insured, for debts due for expenses of last illness and for burial; but if the life of the deceased be otherwise insured for the benefit of his heirs or legatees at the time of his death, and they shall collect the same, the sum collected shall be deducted from the Fifty Thousand Dollars ($50,000.00) and the excess of the latter only shall be exempt. No fee shall be paid or allowed by the court to the executor or administrator for handling same.

HISTORY: Codes, 1892, § 1965; 1906, § 2141; Hemingway's 1917, § 1814; 1930, § 1757; 1942, § 309; Laws, 1908, ch. 175; Laws, 1922, ch. 186; Laws, 1994, ch. 621, § 2, eff from and after July 1, 1994.

Cross References — Proceeds of life insurance policy not being subject to judicial process or assignment while in hands of company, see § 83-7-5.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Proceeds exempted.
3. —Proceeds derived from disability provision.
4. Persons entitled to exempt proceeds.
5. Amount of exemption.
6. —As affected by other insurance to heirs and legatees.
7. Liability for debts; excepted debts.
8. Waiver of exemption.

1. In general.

Statutes granting exemptions to heirs of decedent should be liberally construed in favor of exemptees. Abernethy v. Savage, 159 Miss. 506, 132 So. 553, 1931 Miss. LEXIS 73 (Miss. 1931).

This section [Code 1942, § 309] enlarges exemption by securing to the heirs and legatees of a decedent the proceeds of insurance on his life not exceeding the amount named, even though the policy is payable to his executors or administrators. Coates v. Worthy, 72 Miss. 575, 17 So. 606, 1895 Miss. LEXIS 24 (Miss. 1895).

This section [Code 1942, § 309] applies in favor of the heirs or legatees of the insured, although he left no wife or children surviving him. Coates v. Worthy, 72 Miss. 575, 17 So. 606, 1895 Miss. LEXIS 24 (Miss. 1895).

2. Proceeds exempted.

The fact that the proceeds of federal war risk insurance and adjusted compensation due a deceased veteran's estate were exempt property did not avail a surety on an administratrix's bond to secure the proper administration of a veteran's estate to escape liability on the ground that such property was no part of the estate to be administered and that therefore the sureties on her bond would not be liable for her misconduct in dissipating the estate, since the appointment and qualifications of an administrator were necessary to collect such funds. Hill v. Ouzts, 190 Miss. 341, 200 So. 254, 1941 Miss. LEXIS 54 (Miss. 1941).

Proceeds of war risk insurance are exempt property under this section [Code 1942, § 309]. Hill v. Ouzts, 190 Miss. 341, 200 So. 254, 1941 Miss. LEXIS 54 (Miss. 1941).

Adjusted compensation, though payable to the estate of the war veteran instead of a named beneficiary, is exempted from all debts of the decedent, and from the expenses of last illness and funeral. Hill v. Ouzts, 190 Miss. 341, 200 So. 254, 1941 Miss. LEXIS 54 (Miss. 1941).

Whole proceeds of policy including cash surrender value exempt and administrator entitled thereto. Dreyfus v. Barton, 98 Miss. 758, 54 So. 254, 1910 Miss. LEXIS 122 (Miss. 1910).

Life policy of $1,000 on decedent's life was under this section [Code 1942, § 309] prima facie exempt property, enuring to the benefit of, and descending to the heirs, giving them right to sue thereon, and fact that there are other policies aggregating with it more than $5,000 is matter of defense. Equitable Life Assurance Soc. v. Hartfield, 87 Miss. 548, 40 So. 21, 1905 Miss. LEXIS 175 (Miss. 1905).

3. —Proceeds derived from disability provision.

Proceeds of judgment recovered under disability provision were not exempt from garnishment under law exempting proceeds of life insurance policy. Chattanooga Sewer Pipe Works v. Dumler, 153 Miss. 276, 120 So. 450, 1929 Miss. LEXIS 13 (Miss. 1929).

4. Persons entitled to exempt proceeds.

Bankrupt may assert exemption any time before value actually paid to creditors, and where bankrupt listed policy as asset of estate, his legal representative after his death, could assert exemption. Dreyfus v. Barton, 98 Miss. 758, 54 So. 254, 1910 Miss. LEXIS 122 (Miss. 1910).

A nonresident may claim the proceeds of insurance as being exempt hereunder, notwithstanding provision [Code 1942, § 333] allowing exemption to residents of the state only. Borodofski v. Feld, 88 Miss. 31, 40 So. 816, 1906 Miss. LEXIS 138 (Miss. 1906).

Section [Code 1942, § 333] providing that the exemptions in this chapter shall be allowed in favor of residents of the state only cannot refer to vendees, heirs or legatees, but to the person to whom the exemption right is given. Borodofski v. Feld, 88 Miss. 31, 40 So. 816, 1906 Miss. LEXIS 138 (Miss. 1906).

5. Amount of exemption.

Each distributee entitled to exemption of only pro rata share of exempt life insurance. Magee v. Bank of Hattiesburg & Trust Co., 134 Miss. 126, 98 So. 541, 1923 Miss. LEXIS 243 (Miss. 1923).

6. —As affected by other insurance to heirs and legatees.

Where the heirs and legatees of a decedent are, either all or some of them, otherwise provided for by insurance than as marked out under this section [Code 1942, § 309], and the decedent should leave $5,000 insurance as marked out herein, this section [Code 1942, § 309] was not to provide cumulative exemptions, but should be so construed as to give each heir or legatee, together with what he otherwise might get, an additional amount, sufficient only to make the whole insurance received by him equal to what his ratable share of the $5,000 would be. Cozine v. Grimes, 76 Miss. 284, 76 Miss. 294, 24 So. 197, 1898 Miss. LEXIS 79 (Miss. 1898).

7. Liability for debts; excepted debts.

Amount of decedent's insurance policies payable to administrator, up to amount of exemption to heirs, held not liable for proportionate share of attorney's fee incurred in recovering proceeds of policies. Abernethy v. Savage, 159 Miss. 506, 132 So. 553, 1931 Miss. LEXIS 73 (Miss. 1931).

Debts excepted from exemption of proceeds of insurance should be paid out of other property if sufficient therefor. Delta Ins. & Realty Co. v. Benjamin, 122 Miss. 275, 84 So. 226, 1920 Miss. LEXIS 435 (Miss. 1920).

The funeral expenses of decedent and the administrator's attorney's fee are not debts of the decedent within the meaning of this section [Code 1942, § 309], but a claim for nursing decedent in his last illness is. Dobbs v. Chandler, 84 Miss. 372, 36 So. 388, 1904 Miss. LEXIS 43 (Miss. 1904).

The proceeds of a life insurance policy is not chargeable with a claim for nursing a decedent in his last illness, the same being a debt against him. Dobbs v. Chandler, 84 Miss. 372, 36 So. 388, 1904 Miss. LEXIS 43 (Miss. 1904).

An administrator may pay out of such proceeds the funeral expenses and an administrator's attorney's fee, the same not being debts against him. Dobbs v. Chandler, 84 Miss. 372, 36 So. 388, 1904 Miss. LEXIS 43 (Miss. 1904).

8. Waiver of exemption.

Bankrupt does not waive exemption by listing policies in his schedule. King v. Miles, 108 Miss. 732, 67 So. 182, 1914 Miss. LEXIS 266 (Miss. 1914).

§ 85-3-15. Proceeds of life insurance policy; unassigned policies.

The proceeds of all unassigned life insurance policies payable to the executor or administrator of the insured, upon the death of the insured, shall, whether exempt or not, be paid by such insurance company, to the executor or administrator of such insured deceased, and the receipt of such executor or administrator shall constitute a full and complete acquittance to such insurance company as against the claims of any and all persons claiming any rights under such policy of insurance.

HISTORY: Codes, 1930, § 1758; 1942, § 310; Laws, 1922, ch. 186.

Cross References — Proceeds of life insurance policy not being subject to judicial process or assignment while in hands of company, see § 83-7-5.

RESEARCH REFERENCES

ALR.

Testamentary direction for payment of debts or expense of administration as affecting life insurance proceeds payable to estate. 56 A.L.R.2d 865.

Who is "parent" entitled to proceeds of serviceman's group life insurance, where there are no named beneficiaries, and no surviving widow or children, under 38 USCS § 770(a). 73 A.L.R. Fed. 135.

§ 85-3-17. Judgment for personal injury.

The proceeds of any judgment not exceeding Ten Thousand Dollars ($10,000.00) recovered by any person on account of personal injuries sustained, shall inure to the party or parties in whose favor such judgment may be rendered, free from all liabilities for the debts of the person injured.

HISTORY: Codes, Hemingway's 1917, § 1815; 1930, § 1759; 1942, § 311; Laws, 1914, ch. 146.

Cross References — Actions for injury producing death, see §§ 11-7-13 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Interpretation.

1. In general.

Hospital's probated claim, while not invalid, was properly denied as uncollectable because the only asset of the estate was insurance proceeds received as a result of an unrelated motor-vehicle accident; after payment of attorneys' fees, the balance remaining in the estate was exempt from creditors. In re Estate of Matute, 293 So. 3d 224, 2020 Miss. LEXIS 43 (Miss. 2020).

Evidentiary hearing was required in order to determine whether any proceeds from the settlement of a lawsuit for the wrongful death of the debtor's mother were for personal injuries of the debtor, and thus able to be exempted under Miss. Code Ann. § 85-3-17. In re Pittman, 2003 Bankr. LEXIS 518 (Bankr. N.D. Miss. Jan. 21, 2003).

Law exempting proceeds of judgment for personal injury held inapplicable as to recovery on disability provision of indemnity contract. Chattanooga Sewer Pipe Works v. Dumler, 153 Miss. 276, 120 So. 450, 1929 Miss. LEXIS 13 (Miss. 1929).

Proceeds of judgment for personal injuries, not exceeding $10,000, inures to party recovering free of all liabilities for debts of injured person. Laurel Mills v. Ward, 137 Miss. 221, 102 So. 263, 1924 Miss. LEXIS 221 (Miss. 1924).

2. Interpretation.

Where: (1) the bankruptcy debtor claimed an exemption in the amount of $ 16,00.00 for the settlement proceeds from a lawsuit to which she was a party; (2) the trustee duly filed an objection to the debtor's claimed exemption on the grounds that settlement proceeds were not allowable as exempt under Miss. Code Ann.

§ 85-3-17 et seq.; and (3) the bankruptcy judge sustained the objection, the debtor's appeal was dismissed. The bankruptcy judge concluded that permitting the exemption sought would represent an impermissible judicial broadening of the statute. Marshall v. Pongetti, 332 B.R. 284, 2005 U.S. Dist. LEXIS 29016 (N.D. Miss. 2005).

RESEARCH REFERENCES

ALR.

Cost of hiring substitute or assistant during incapacity of injured party as item of damages in action for personal injury. 37 A.L.R.2d 364.

Excessiveness or adequacy of damages awarded for injuries to nerves or nervous system. 51 A.L.R.5th 467.

Excessiveness or adequacy of damages awarded for injuries causing mental or psychological damages. 52 A.L.R.5th 1.

Am. Jur.

31 Am. Jur. 2d, Exemptions §§ 208-211, 233, 234.

§ 85-3-19. Beneficiaries of deceased plaintiff take damages free from debts.

Whenever suit was begun in the name of the party injured, and such party shall die while said suit is pending in any court, and said suit shall be revived in the name of the administrator, any sum finally recovered in any such suit, if such deceased left surviving a husband or wife, or children or father or mother, to whom such judgment shall be distributed, as may be provided by law, such wife or children, or father or mother, or husband who may be entitled to recover or receive such moneys shall take same free from all liabilities for the debts of the deceased, and also free from all liabilities for the debts of the person or persons, as above entitled to receive them.

HISTORY: Codes, Hemingway's 1917, § 1816; 1930, § 1760; 1942, § 312; Laws, 1914, ch. 146.

RESEARCH REFERENCES

ALR.

Cost of hiring substitute or assistant during incapacity of injured party as item of damages in action for personal injury. 37 A.L.R.2d 364.

Am. Jur.

31 Am. Jur. 2d, Exemptions §§ 208-211, 233, 234.

§ 85-3-21. Homestead exemption; land and buildings.

Every citizen of this state, male or female, being a householder shall be entitled to hold exempt from seizure or sale, under execution or attachment, the land and buildings owned and occupied as a residence by him, or her, but the quantity of land shall not exceed one hundred sixty (160) acres, nor the value thereof, inclusive of improvements, save as hereinafter provided, the sum of Seventy-five Thousand Dollars ($75,000.00); provided, however, that in determining this value, existing encumbrances on such land and buildings, including taxes and all other liens, shall first be deducted from the actual value of such land and buildings. But husband or wife, widower or widow, over sixty (60) years of age, who has been an exemptionist under this section, shall not be deprived of such exemption because of not residing therein.

HISTORY: Codes, Hutchinson's 1848, ch. 62, art. 17(1); 1857, ch. 61, art. 281; 1871, § 2135; 1880, § 1248; 1892, § 1970; 1906, § 2146; Hemingway's 1917, § 1821; 1930, § 1765; 1942, § 317; Laws, 1938, ch. 125; Laws, 1950, ch. 360; Laws, 1970, ch. 323, § 1; Laws, 1979, ch. 447, § 1; Laws, 1991, ch. 479, § 1, eff from and after July 1, 1991.

Cross References — Power of legislature to regulate sale of homesteads, see MS Const Art. 4, § 94.

Tax exemptions of homestead, see §§ 27-33-1 et seq.

Descent of exempt property, see §§ 91-1-19 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Establishment of homestead.
3. Separate tracts or lots.
4. Title or interest required.
5. Persons entitled.
6. Rights of survivors.
7. Sale or transfer.
8. Incumbrances on homestead.
9. Area of homestead.
10. Value of homestead.
11. Time for claiming exemption.
12. Estoppel to claim homestead.
13. Abandonment.
14. —Removal.
15. Mobile homes.
16. Waiver.
17. Relation to other statutes.

1. In general.

Homestead exemption provision is intended to protect entire family from misfortunes or imprudence of primary breadwinner, and is not dependent on breadwinner's continued status as homeowner or on his or her intention to acquire another homestead with proceeds; it is intended to protect home from forced sale and to protect debtor's property from creditors to provide source of revenue for support of breadwinner and family. In re Williamson, 844 F.2d 1166, 1988 U.S. App. LEXIS 6404 (5th Cir. Miss. 1988).

Husband may convey homestead to wife regardless of his intention toward creditors, because conveyance of homestead does not "defraud" creditors; homestead is exempt from creditors irrespective of conveyance. Joe T. Dehmer Distributors, Inc. v. Temple, 826 F.2d 1463, 1987 U.S. App. LEXIS 12486 (5th Cir. Miss. 1987).

Judgment based on division of community property is debt subject to homestead exemption like any other; however, judgment will defeat exemption to extent that judgment creditor shows it to be based on child support. Pickle v. Pickle, 476 So. 2d 32, 1985 Miss. LEXIS 2244 (Miss. 1985).

Judgments do not constitute a lien until enrolled; additionally, the homestead exemption in effect at the time judgments are enrolled is applicable in an action to foreclose judgment liens on property sold under a deed of trust, despite the fact that the amount of the homestead exemption is subsequently increased. Hall v. Panola County Bank, 412 So. 2d 238, 1982 Miss. LEXIS 1920 (Miss. 1982).

One does not own homestead rights in property unless he has some legal right to its possession. McGee v. Chickasaw County School Board, 239 Miss. 5, 120 So. 2d 778, 1960 Miss. LEXIS 260 (Miss. 1960).

A tort action does not come within the constitutional provision prohibiting impairment of existing contracts, and statute increasing the homestead exemption could properly be applied to judgment which was rendered after the passage of the act, even though the cause of action arose before the statute was passed. Odom v. Luehr, 226 Miss. 661, 85 So. 2d 218, 1956 Miss. LEXIS 446 (Miss. 1956).

Statutes granting homestead exemption are entitled to be liberally construed. Daily v. Gulfport, 212 Miss. 361, 54 So. 2d 485, 1951 Miss. LEXIS 457 (Miss. 1951); Biggs v. Roberts, 237 Miss. 406, 115 So. 2d 151, 1959 Miss. LEXIS 485 (Miss. 1959).

Neither the cases dealing only with urban property and those dealing with an urban tract and a rural tract as constituting together one homestead are applicable to a case where rural lands are involved. Horton v. Horton, 210 Miss. 116, 48 So. 2d 850, 1950 Miss. LEXIS 328 (Miss. 1950).

Exemption laws are construed liberally in favor of the owner of the property exempted. Bank of Myrtle v. Garrison, 183 Miss. 526, 184 So. 291, 1938 Miss. LEXIS 265 (Miss. 1938).

Homestead exemption would prevent declaration of lien on homestead land for debts which occupants themselves owed as well as debts of others. Jones v. Lamensdorf, 175 Miss. 565, 167 So. 624, 1936 Miss. LEXIS 62 (Miss. 1936).

The homestead right being a favored one in law, whenever there is serious doubt as to whether the property is or is not a homestead, the doubt should be resolved in favor of the exemptionist, sustaining, instead of defeating, the estate, which is created by sound public policy. Levis-Zukoski Mercantile Co. v. McIntyre, 93 Miss. 806, 47 So. 435, 1908 Miss. LEXIS 140 (Miss. 1908).

The homestead is the preservation of the family mansion and a certain quantity of land pertaining thereto to the debtor and his family as a place of residence; The policy of the law is that the family should enjoy the property as a home, contributing to their support, and if the debtor or some member of the family do not occupy the premises as a homestead, exemption ceases. Acker v. Trueland, 56 Miss. 30, 1878 Miss. LEXIS 37 (Miss. 1878).

The statute increasing exemptions is inapplicable as to existing creditors. Lessley v. Phipps, 49 Miss. 790, 1874 Miss. LEXIS 14 (Miss. 1874).

The term "land," in this statute, embraces a leasehold estate. Johnson v. Richardson, 33 Miss. 462, 1857 Miss. LEXIS 62 (Miss. 1857); McGrath v. Sinclair, 55 Miss. 89, 1877 Miss. LEXIS 109 (Miss. 1877); King v. Sturges, 56 Miss. 606, 1879 Miss. LEXIS 173 (Miss. 1879).

2. Establishment of homestead.

Householder need not own, and thus need not sell, both land and buildings to qualify for exemption in proceeds so long as property sold was used for homestead purposes; and fact that householder and his family continued to live on land as lessees does not make householder ineligible for homestead exemption. In re Williamson, 844 F.2d 1166, 1988 U.S. App. LEXIS 6404 (5th Cir. Miss. 1988).

The language of Mississippi Code § 85-3-25 indicates that a homestead declaration is voluntary and not mandatory. Shows v. Watkins, 485 So. 2d 288, 1986 Miss. LEXIS 2380 (Miss. 1986).

Income producing property under a sand and gravel lease is not ipso facto ineligible to be homestead. Shows v. Watkins, 485 So. 2d 288, 1986 Miss. LEXIS 2380 (Miss. 1986).

It is not absolutely necessary for the husband to acquire the property by inheritance in order to be entitled to claim it as a homestead. Biggs v. Roberts, 237 Miss. 406, 115 So. 2d 151, 1959 Miss. LEXIS 485 (Miss. 1959).

Where at the time the husband conveyed property to his wife the parties and their children were residing on the property and had been for a number of years, no new home had been acquired by the husband, and, after the husband had left the city, the wife and the children continued to occupy the property, the property was the homestead of the parties, and the husband had a right to convey to his wife the extent and value of the homestead regardless of his intention toward his creditors. 229 Miss. 687, 91 So. 2d 831.

The statute does not require the actual utilization of every acre of land in a tract before it can be claimed as a homestead. Daily v. Gulfport, 212 Miss. 361, 54 So. 2d 485, 1951 Miss. LEXIS 457 (Miss. 1951).

Occupancy coupled with residence, citizenship, and status of being head of family perfects right so that it cannot be defeated because children remained at school when father removed. Roberts v. Thomas, 94 Miss. 219, 48 So. 408, 1908 Miss. LEXIS 46 (Miss. 1908).

Land, always occupied as homestead by claimant except for about 6 weeks when she lived with her husband on his father's place, was her homestead, although after separating from husband she rented part of land for one year and stayed elsewhere at night but kept one room of the house and a horse and other animals on the land. Levis-Zukoski Mercantile Co. v. McIntyre, 93 Miss. 806, 47 So. 435, 1908 Miss. LEXIS 140 (Miss. 1908).

A decree in equity adjudging a conveyance from a husband to his wife, fraudulent as to the creditors of the husband, and directing a sale of the land to pay the debts, does not preclude the husband from moving upon the land with his family and making it his homestead; and if he make it his homestead after the rendition of the decree, it will cease to be liable to sale thereunder. Dulion v. Harkness, 80 Miss. 8, 31 So. 416, 1902 Miss. LEXIS 216 (Miss. 1902).

If one has two tracts of land, either of which he might claim as his homestead, and convey one, he will be held to have selected the other as his homestead. Rutherford v. Jamieson, 65 Miss. 219, 3 So. 412, 1887 Miss. LEXIS 41 (Miss. 1887).

A tenancy at will of a forty-acre tract containing the dwelling, is sufficient to carry the exemption of a detached forty acres owned in fee and cultivated. King v. Sturges, 56 Miss. 606, 1879 Miss. LEXIS 173 (Miss. 1879); Parisot v. Tucker, 65 Miss. 439, 4 So. 113, 1888 Miss. LEXIS 14 (Miss. 1888).

Actual residence and occupation of the land as a home by the family is essential to give it the character of a homestead; after it has acquired that status, literal or actual residence is not required. Campbell v. Adair, 45 Miss. 170, 1871 Miss. LEXIS 64 (Miss. 1871); Hand v. Winn, 52 Miss. 784, 1876 Miss. LEXIS 292 (Miss. 1876).

3. Separate tracts or lots.

In an action to determine the validity of a deed to property alleged to be homestead in which grantor's wife did not join, where the evidence showed that the tract in controversy and a non-contiguous tract upon which grantor's dwelling was located were both used for timber, it was error for the chancellor to hold that the land in controversy was not homestead property, even though he found that the value of the other tract, upon which the dwelling house was situated, was in excess of the valuation mentioned in the homestead statute. Hendry v. Hendry, 300 So. 2d 147, 1974 Miss. LEXIS 1614 (Miss. 1974).

Where lands were not contiguous because a road separated them, such a separation did not necessarily defeat a homestead claim. Daily v. Gulfport, 212 Miss. 361, 54 So. 2d 485, 1951 Miss. LEXIS 457 (Miss. 1951).

Where a decedent resided on one tract of land and used this tract with another as a farm unit which consisted of less than 160 acres, the widow was entitled to claim both parcels of land as a homestead although they were not contiguous. Horton v. Horton, 210 Miss. 116, 48 So. 2d 850, 1950 Miss. LEXIS 328 (Miss. 1950).

Plaintiff claiming city residence as homestead could not also claim 80-acre tract two and one-half miles from city residence, although value of both did not exceed $3,000. Nye v. Winborn, 120 Miss. 1, 81 So. 644, 1919 Miss. LEXIS 57 (Miss. 1919).

Person owning and residing on four acre lot and owning and cultivating an adjoining parcel, separated from the former parcel by a railroad, could claim both as homestead where both did not exceed prescribed area and value for homesteads. Parisot v. Tucker, 65 Miss. 439, 4 So. 113, 1888 Miss. LEXIS 14 (Miss. 1888).

4. Title or interest required.

Householder's interest in property under land sale contract is sufficient for eligibility for homestead protection under Miss. Code § 85-3-21. In re Williamson, 844 F.2d 1166, 1988 U.S. App. LEXIS 6404 (5th Cir. Miss. 1988).

Mere occupancy of land under a deed which confers no title will not support a claim for homestead exemption; Nor can a widow derive any homestead right from her husband who, with her, occupied at his death as tenant at will the land which he conveyed to others. Clark v. Edwards, 180 Miss. 97, 177 So. 361, 1937 Miss. LEXIS 120 (Miss. 1937), overruled, Dogan v. Cooley, 184 Miss. 106, 185 So. 783, 1939 Miss. LEXIS 40 (Miss. 1939).

The statute providing for the homestead exemption for land "owned and occupied by the debtor as a residence," the right must in all cases be founded on ownership or some assignable interest in the land. Clark v. Edwards, 180 Miss. 97, 177 So. 361, 1937 Miss. LEXIS 120 (Miss. 1937), overruled, Dogan v. Cooley, 184 Miss. 106, 185 So. 783, 1939 Miss. LEXIS 40 (Miss. 1939).

The homestead exemption granted by statute is not on any particular interest in land, and interest need not be ownership in fee simple, and all that is necessary is that the exemptionist have an assignable interest in the land. Clark v. Edwards, 180 Miss. 97, 177 So. 361, 1937 Miss. LEXIS 120 (Miss. 1937), overruled, Dogan v. Cooley, 184 Miss. 106, 185 So. 783, 1939 Miss. LEXIS 40 (Miss. 1939).

Husband or wife must have some kind of ownership in land before homestead claim can arise. Stuart v. Kennedy & Co., 145 Miss. 728, 110 So. 847, 1927 Miss. LEXIS 126 (Miss. 1927).

Property must be owned and actually occupied by party entitled to exemption. Chrismand v. Mauldin, 130 Miss. 259, 94 So. 1, 1922 Miss. LEXIS 200 (Miss. 1922).

The homestead right is founded on ownership of some assignable interest in the land. Berry v. Dobson, 68 Miss. 483, 10 So. 45, 1891 Miss. LEXIS 34 (Miss. 1891); Jones v. Lamensdorf, 175 Miss. 565, 167 So. 624, 1936 Miss. LEXIS 62 (Miss. 1936).

5. Persons entitled.

Joint debtors were not permitted to separately claim the $75,000 homestead exemption, effectively allowing them to exempt equity of $150,000, because the homestead exemption did not provide for more than one homestead exemption to be applied to a single residence, regardless of how many individual debtors resided therein. In re Pace, 521 B.R. 124, 2014 Bankr. LEXIS 4341 (Bankr. N.D. Miss. 2014).

The purpose of the amendment to § 85-3-21 deleting the language "and having a family" from the requirements necessary for a person to claim the homestead exemption was to allow single persons to claim the exemption, the same as persons with families. Matter of Memorial Hosp. v. Franzke (In re Estate of Franzke), 634 So. 2d 117, 1994 Miss. LEXIS 132 (Miss. 1994).

Householders are now eligible for homestead exemption even if single. Pickle v. Pickle, 476 So. 2d 32, 1985 Miss. LEXIS 2244 (Miss. 1985).

Where the former husband lost his right to occupy the marital home under a divorce decree giving the wife the right to exclusive use of the home, the husband lost his homestead rights under Code 1972 §§ 27-33-3 & 85-3-21, so that the husband thus held no homestead exemption on the property which could be used to defeat the former wife's right to partition under Code 1972 § 11-21-3; the existence of homestead rights in the former wife was irrelevant, since she waived them by bringing a suit for partition sale. Blackmon v. Blackmon, 350 So. 2d 44, 1977 Miss. LEXIS 2207 (Miss. 1977).

Signers of trust deed who were married and living upon land conveyed by such deed as a homestead held entitled to homestead exemption where their spouses did not sign deed. Jones v. Lamensdorf, 175 Miss. 565, 167 So. 624, 1936 Miss. LEXIS 62 (Miss. 1936).

"Householder," in statute allowing homestead exemption to debtor householder under sixty years, means a person who has a family whom he keeps together and provides for, and of which he is the head and master. Moore v. Sykes' Estate, 167 Miss. 212, 149 So. 789, 1933 Miss. LEXIS 128 (Miss. 1933).

One, to whom a part of land held in common had been allotted by partition, subject to debts owed by him to his cotenants, could claim homestead exemption therein as against his former cotenants. Woods v. Bowles, 92 Miss. 843, 46 So. 414 (Miss. 1908); Jones v. Lamensdorf, 175 Miss. 565, 167 So. 624, 1936 Miss. LEXIS 62 (Miss. 1936).

Only a person who is a citizen and resident of this state, as well as a householder having a family, is entitled to homestead exemption. Vignaud v. Dean, 77 Miss. 860, 27 So. 881, 1900 Miss. LEXIS 37 (Miss. 1900).

An aged widower living with his married son of middle age, in a house built and controlled by the same, on land of the father who receives no rent and contributes nothing to the support of the family beyond his own maintenance, and who is under no moral and legal duty to contribute to the support of the family, is neither a "householder" nor the head of a family so as to entitle him to the homestead exemption under this section [Code 1942, § 317]. Powers v. Sample, 72 Miss. 187, 16 So. 293, 1894 Miss. LEXIS 77 (Miss. 1894).

Tenant at will of land containing dwelling is entitled to homestead exemption. King v. Sturges, 56 Miss. 606, 1879 Miss. LEXIS 173 (Miss. 1879); Jones v. Lamensdorf, 175 Miss. 565, 167 So. 624, 1936 Miss. LEXIS 62 (Miss. 1936).

A tenant in common, occupying with the consent of his cotenants, is entitled to the exemption. McGrath v. Sinclair, 55 Miss. 89, 1877 Miss. LEXIS 109 (Miss. 1877).

One who shelters but does not support an informally adopted daughter and her husband, is not entitled to the exemption. Hill v. Franklin, 54 Miss. 632, 1877 Miss. LEXIS 62 (Miss. 1877).

An unmarried man is not the head of a family because his adult son, who is able-bodied and capable of earning a support, lives with him. Hill v. Franklin, 54 Miss. 632, 1877 Miss. LEXIS 62 (Miss. 1877); Cox v. Martin, 75 Miss. 229, 21 So. 611, 1897 Miss. LEXIS 82 (Miss. 1897).

The wife is deemed a "householder, and having a family," under the statute. Partee v. Stewart, 50 Miss. 717, 1874 Miss. LEXIS 110 (Miss. 1874).

One becoming the head of a family after judgment and levy, but before sale, is entitled to the exemption. Trotter v. Dobbs, 38 Miss. 198, 1859 Miss. LEXIS 105 (Miss. 1859), limited, Meyer Bros. Drug Co. v. Fly, 105 Miss. 752, 63 So. 227, 1913 Miss. LEXIS 259 (Miss. 1913); Irwin v. Lewis, 50 Miss. 363, 1874 Miss. LEXIS 67 (Miss. 1874); Letchford v. Cary, 52 Miss. 791, 1876 Miss. LEXIS 294 (Miss. 1876); Jones v. Hart, 62 Miss. 13, 1884 Miss. LEXIS 5 (Miss. 1884).

6. Rights of survivors.

Trial court did not err in granting an executrix summary judgment and in determining that the claim of the Mississippi Division of Medicaid was not valid against a decedent's property because the decedent predeceased his children and a grandchild to whom he devised all of his property, and pursuant to the unambiguous language of Miss. Code Ann. §§ 85-3-21, 91-1-19, and 91-1-21, coupled with case law, the homestead, with its exemption, passed from the decedent to his children and grandchildren free of his debts; thus, Medicaid was not entitled to pursue a claim against the exempted property as it was not a part of the estate. State v. Stinson (In re Estate of Darby), 68 So. 3d 702, 2011 Miss. App. LEXIS 96 (Miss. Ct. App.), cert. denied, 69 So. 3d 767, 2011 Miss. LEXIS 419 (Miss. 2011).

Judgment creditor of husband and wife who together owned property as tenants by the entirety could levy execution and sell that portion of homestead property which exceeded value of statutory homestead exemption which had vested in wife following husband's death; Section 91-1-23 was not applicable to debt for which surviving spouse was jointly and severally liable. In re Osborne, 120 B.R. 64, 1990 Bankr. LEXIS 2184 (Bankr. N.D. Miss. 1990).

It is clearly the purpose of the statute to give the surviving husband or wife, who has been an exemptionist, the benefit of the exemption if the survivor was over sixty years of age at the time of the partner's death. Bank of Myrtle v. Garrison, 183 Miss. 526, 184 So. 291, 1938 Miss. LEXIS 265 (Miss. 1938).

Amendment providing husband or wife, widow or widower, over 60 years of age, should not be deprived of exemptions, held to preserve only existing exemptions. Kimbrough v. Powell, 143 Miss. 498, 108 So. 498, 1926 Miss. LEXIS 286 (Miss. 1926).

Widow over 60 years of age when husband died, with no one dependent on either for support, had no exemption rights in homestead preserved to her because she was over 60 years of age. Kimbrough v. Powell, 143 Miss. 498, 108 So. 498, 1926 Miss. LEXIS 286 (Miss. 1926).

Court could not order sale of homestead of widow more than 60 years of age who had moved from premises, but was being supported in part from products. Wright v. Coleman, 137 Miss. 699, 102 So. 774, 1925 Miss. LEXIS 21 (Miss. 1925).

Laws 1914, c 225, extending homestead exemption to widow or widower over 60 years of age who had been exemptionist regardless of having a family or occupying the homestead, is not unconstitutional as impairing the obligation of a contract made before the enactment of such statute, where property was exempt at time contract was made and also at time statute was passed. McCreight v. W. W. Scales & Co., 134 Miss. 303, 99 So. 257, 1924 Miss. LEXIS 291 (Miss. 1924).

Surviving widow entitled to occupy homestead and heirs cannot have partition thereof. Dickerson v. Leslie, 94 Miss. 627, 47 So. 659, 1909 Miss. LEXIS 319 (Miss. 1909).

7. Sale or transfer.

Where debtor had title to homestead property, actually occupied it, and had citizenship status at place of homestead, fact that debtor had entered agreement prior to bankruptcy to sell his homestead did not of itself deprive debtor of right to claim exemption in proceeds from sale of his homestead. In re Williamson, 49 B.R. 675, 1985 Bankr. LEXIS 6761 (Bankr. S.D. Miss. 1985).

Widow could not have homestead property sold to satisfy her widow's allowance and property was not subject to partition or sale during widowhood without her consent. Mills v. Mills, 279 So. 2d 917, 1973 Miss. LEXIS 1495 (Miss. 1973).

Widow is not entitled to have homestead property sold and at the same time retain her homestead rights. Mills v. Mills, 279 So. 2d 917, 1973 Miss. LEXIS 1495 (Miss. 1973).

That property is occupied by the judgment debtor's mother as a homestead does not preclude a sale of his undivided interest therein to satisfy the judgment. Jones v. Jones, 249 Miss. 322, 161 So. 2d 640, 1964 Miss. LEXIS 393 (Miss. 1964).

Under the statute, the proceeds of a voluntary sale of a homestead are exempt under all circumstances, regardless of the vendor's continuing to be a householder, or his acquiring another homestead, or the intent with which he keeps the proceeds. Davis v. Lammons, 246 Miss. 624, 151 So. 2d 907, 1963 Miss. LEXIS 487 (Miss. 1963).

Although wife did not sign timber deed, grantor and wife could not set up homestead claim against grantee in manner different from that prescribed by statute. Robert G. Bruce Co. v. Spears, 181 Miss. 786, 181 So. 333, 1938 Miss. LEXIS 119 (Miss. 1938).

Where wife did not sign timber deed executed by husband, court, on suit by grantee, could not allot homestead in absence of declaration by grantor, but should have appointed commissioner to make allotment before adjudicating rights of parties. Robert G. Bruce Co. v. Spears, 181 Miss. 786, 181 So. 333, 1938 Miss. LEXIS 119 (Miss. 1938).

Transfer of part of homestead for purpose of defeating execution on crops, not invalid as owner's motive was immaterial. Lindsey v. Holly, 105 Miss. 740, 63 So. 222, 1913 Miss. LEXIS 257 (Miss. 1913).

Conveyance of homestead by husband without wife's joinder conveys no estate whatever. McKenzie v. Shows, 70 Miss. 388, 12 So. 336, 1892 Miss. LEXIS 119 (Miss. 1892).

An insolvent debtor, as against a judgment creditor, has a right to convey his homestead to another in consideration for a conveyance to his wife of real estate, not exempt, and such real estate is not liable for his debts. Airey v. Buchanan, 64 Miss. 181, 1 So. 101, 1886 Miss. LEXIS 37 (Miss. 1886).

There is no provision in the Code of 1880 which precludes the owner from devising his homestead as any other land, and only in case of his dying intestate can his widow assert her rights of survivorship. Osburn v. Sims, 62 Miss. 429, 1884 Miss. LEXIS 98 (Miss. 1884).

The fraudulent conveyance of the homestead does not defeat the exemption. Edmonson & Winn v. Meacham, 50 Miss. 34, 1874 Miss. LEXIS 20 (Miss. 1874).

8. Incumbrances on homestead.

Bank was entitled to foreclose deed of trust against homestead property for advances made to the husband, acting alone and without his wife's knowledge, which were additional to the original indebtedness secured by the deed of trust contract where the contract contained a "dragnet clause" which clearly and unambiguously provided that its purpose was to "secure all loans and advances which Beneficiary has made or may hereafter make to the

Grantor, or any of them"; nor did the fact that the husband had pledged certain cattle as additional security for the advances, which were missing when the bank sought to replevy them, amount to a waiver on the part of the bank of the security granted it by the deed of trust. Newton County Bank, Louin Branch Office v. Jones, 299 So. 2d 215, 1974 Miss. LEXIS 1592 (Miss. 1974).

Deed of trust, securing purchase-money of homestead, is valid without wife's signature. Stuart v. Kennedy & Co., 145 Miss. 728, 110 So. 847, 1927 Miss. LEXIS 126 (Miss. 1927).

Option to purchase is a covenant running with land enforceable against grantor after he marries and occupies land as homestead. Minor v. Interstate Gravel Co., 130 Miss. 553, 94 So. 3, 1922 Miss. LEXIS 201 (Miss. 1922).

Prior incumbrances or covenants running with land defeat homestead exemption subsequently arising. Minor v. Interstate Gravel Co., 130 Miss. 553, 94 So. 3, 1922 Miss. LEXIS 201 (Miss. 1922).

Exemption of homestead acquired by occupation after execution, but before sale, does not confer right to convey land not his homestead, free from lien. Bank of Philadelphia v. Posey, 130 Miss. 530, 92 So. 840, 1922 Miss. LEXIS 176 (Miss. 1922).

Divorced wife of owner who received portion of wild land by decree in divorce cannot set up homestead right against purchaser under prior trust deed made by husband. Mounger v. Gandy, 110 Miss. 133, 69 So. 817, 1915 Miss. LEXIS 13 (Miss. 1915).

Husband and wife may execute valid mortgage on after-acquired property although used as homestead. Adkinson & Bacot Co. v. Varnado, 91 Miss. 825, 47 So. 113, 1907 Miss. LEXIS 215 (Miss. 1907).

Growing trees being a part of realty, a conveyance by a husband of all the merchantable timber on his homestead with indefinite time for its removal, is an incumbrance of the homestead and void if the wife does not join. McKenzie v. Shows, 70 Miss. 388, 12 So. 336, 1892 Miss. LEXIS 119 (Miss. 1892).

Where an unmarried man executes a deed of trust on his land to secure a debt due by him, and afterwards marries and occupies the land as a homestead, and before the bar of the statute of limitations attaches, makes a new promise in writing to pay the debt, a new period is thereby given for both the debt and security to run, and such security is paramount to his homestead claim. Hambrick v. Jones, 64 Miss. 240, 8 So. 176, 1886 Miss. LEXIS 53 (Miss. 1886).

9. Area of homestead.

A rural homesteader should ordinarily be entitled to as much as 160 acres for homestead purposes if such an amount of his land is so located as to be truly susceptible of being devoted to homestead purposes as a unit, and without giving the homestead laws an unreasonable application for the protection of the homesteader. Horton v. Horton, 210 Miss. 116, 48 So. 2d 850, 1950 Miss. LEXIS 328 (Miss. 1950).

Householder claiming exemption of rural land sought to be subjected to payment of his debts held limited to 160 acres. Clegg v. Federal Reserve Bank, 169 Miss. 578, 153 So. 812, 1934 Miss. LEXIS 77 (Miss. 1934).

Decree directing proceeds of sale of deceased's interest in common estate in excess of 160-acre homestead be paid to administrator for benefit of creditors held correct. Kimbrough v. Powell, 143 Miss. 498, 108 So. 498, 1926 Miss. LEXIS 286 (Miss. 1926).

10. Value of homestead.

Where debtor in bankruptcy failed to specify particular acreage constituting his homestead at time he claimed exemption, court assumed fungibility of all 854 acres comprising debtor's plantation with debtor's equity evenly distributed throughout, and thus pro-rated his interest in 160 acres claimed according to his total equity interest in entire tract. In re Williamson, 844 F.2d 1166, 1988 U.S. App. LEXIS 6404 (5th Cir. Miss. 1988).

If wife's interest in homestead exceeds $30,000, she may keep entire value of that interest from husband's creditors. Joe T. Dehmer Distributors, Inc. v. Temple, 826 F.2d 1463, 1987 U.S. App. LEXIS 12486 (5th Cir. Miss. 1987).

The question of value has no place in the consideration of the rights of a surviving widow to use and occupancy of the homestead, her rights being absolute so long as she remains a widow; the limitation on the value of the homestead that is exempt from creditors' demands, set by § 85-3-21, is not applicable. Stockett v. Stockett, 337 So. 2d 1237, 1976 Miss. LEXIS 1603 (Miss. 1976).

The value of the homestead is not material in passing on the rights of the surviving widow, since it was never the intention of the legislature that 160 acres of land should be reduced in quantity, save in one instance, and that is where the rights of the creditors are involved. Horton v. Horton, 210 Miss. 116, 48 So. 2d 850, 1950 Miss. LEXIS 328 (Miss. 1950).

The exemption covered the land to the extent of $3,000 in value, regardless of the exemptioner's interest therein and without the deduction of existing encumbrances on the land. Clark v. Edwards, 180 Miss. 97, 177 So. 361, 1937 Miss. LEXIS 120 (Miss. 1937), overruled, Dogan v. Cooley, 184 Miss. 106, 185 So. 783, 1939 Miss. LEXIS 40 (Miss. 1939).

Householder claiming exemption of rural land sought to be subjected to payment of his debts held limited to $3,000 in value. Clegg v. Federal Reserve Bank, 169 Miss. 578, 153 So. 812, 1934 Miss. LEXIS 77 (Miss. 1934).

A debtor who asserts a homestead exemption in an estate in common which exceeds one hundred sixty acres in quantity has no floating claim to an exemption of his interest in the entire estate; his exemption in such estate is limited to a homestead of the proper quantity, as well as value, and if the value of the debtor's interest in the one hundred sixty acres constituting the homestead happens to be worth less than three thousand dollars, this fact does not entitle him to an exemption in the remainder of the estate. Kimbrough v. Powell, 143 Miss. 498, 108 So. 498, 1926 Miss. LEXIS 286 (Miss. 1926).

11. Time for claiming exemption.

Homestead exemption as to land sold under execution could not be claimed on appeal in a subsequent suit where it appeared that no such claim was asserted at the time of the sale. Clark v. Carpenter, 201 Miss. 436, 29 So. 2d 215, 1947 Miss. LEXIS 404 (Miss. 1947).

Judgment debtor may claim exemption any time before sale. Woods v. Bowles, 92 Miss. 843, 46 So. 414 (Miss. 1908).

12. Estoppel to claim homestead.

Debtor in bankruptcy claiming homestead exemption did not waive his homestead rights in proceeds of sale of homestead property by not making his claim until after sale was consummated. In re Williamson, 844 F.2d 1166, 1988 U.S. App. LEXIS 6404 (5th Cir. Miss. 1988).

An exemptionist who fails to assert his exemption in a chancery proceeding fully adjudicating his right cannot afterwards claim it against a purchaser under the decree. Henderson v. Still, 61 Miss. 391, 1883 Miss. LEXIS 143 (Miss. 1883).

13. Abandonment.

One may claim homestead exemption only in property owned and occupied as residence, and husband abandoned homestead rights when he voluntarily left property without intent to return. Joe T. Dehmer Distributors, Inc. v. Temple, 826 F.2d 1463, 1987 U.S. App. LEXIS 12486 (5th Cir. Miss. 1987).

75-year old homeowner was not divested of his rights to claim homestead exemption by virtue of his conviction for murder and sentence of life imprisonment, despite claim that he was not entitled to the exemption because he had no legal right to occupy the property and that by voluntarily murdering victim he had abandoned any claim to homestead that he would otherwise have. Roberts v. Grisham, 493 So. 2d 940, 1986 Miss. LEXIS 2588 (Miss. 1986).

Where husband at time of separation from wife removed from their homestead without intention to return, he thereby abandoned his and his wife's homestead rights therein, though wife remained in possession under color of a deed given in settlement of claims for support. Lewis v. Ladner, 177 Miss. 473, 168 So. 281, 172 So. 312, 1936 Miss. LEXIS 230 (Miss. 1936).

That wife remained in occupancy of homestead abandoned by husband held immaterial as to existence of homestead rights, where by agreeing to a marital separation she consented to his removal.

Lewis v. Ladner, 177 Miss. 473, 168 So. 281, 172 So. 312, 1936 Miss. LEXIS 230 (Miss. 1936).

Confinement in jail does not constitute abandonment of homestead. Lindsey v. Holly, 105 Miss. 740, 63 So. 222, 1913 Miss. LEXIS 257 (Miss. 1913).

Moving from homestead to conduct boarding house in near-by town with borrowed money secured by mortgage on homestead was abandonment thereof, although owner intended to return if she failed to pay for place moved to. Bennett Bros. v. Dempsey, 94 Miss. 406, 48 So. 901, 1908 Miss. LEXIS 55 (Miss. 1908).

Where one abandons a rural homestead and acquires another in town, but abandons the latter, intending as soon as practicable to reoccupy the country home, and makes preparations therefor, but is prevented by protracted sickness, which after the date upon which he expected to reenter ends in death, the country place becomes revested with its homestead character and is exempt. Ross v. Porter, 72 Miss. 361, 16 So. 906, 1894 Miss. LEXIS 122 (Miss. 1894).

So long as the wife and family occupy the premises, though abandoned by the husband, the exemption continues until he acquire another homestead. Thoms v. Thoms, 45 Miss. 263, 1871 Miss. LEXIS 74 (Miss. 1871).

14. —Removal.

Owner of country homestead may purchase house in village, move family thereto to educate children, qualify as elector and hold a municipal office without forfeiting right to claim country home as exempt, if he keep actual possession in person or by some member of his family, cultivates it, continues to claim it as homestead and intends to return as soon as object of moving to village accomplished. Gilmore v. Brown, 93 Miss. 63, 46 So. 840, 1908 Miss. LEXIS 111 (Miss. 1908).

Where a husband and wife temporarily remove from their homestead to cultivate other lands for a year or two, leaving their children in occupancy of the home, intending themselves all the time to return to it, they have not parted with its possession. Culp v. Wooten, 79 Miss. 503, 31 So. 1, 1901 Miss. LEXIS 83 (Miss. 1901).

Both the intent to reoccupy speedily and cause of removal must exist to protect the homestead. Moore v. Bradford, 70 Miss. 70, 11 So. 630, 1892 Miss. LEXIS 60 (Miss. 1892).

Ceasing to reside on a homestead renders it liable for debts unless the removal be temporary, by reason of casualty or necessity, and with the purpose of speedily reoccupying as soon as the cause is removed. Moore v. Bradford, 70 Miss. 70, 11 So. 630, 1892 Miss. LEXIS 60 (Miss. 1892).

Where a husband and family reside on a certain place belonging to him as a homestead, then move temporarily to a place belonging to his wife with the purpose of returning to his homestead, and while thus residing on the wife's place the husband conveyed away his place without the wife joining in the deed, after the death of the husband his widow and minor children cannot maintain a bill claiming homestead in the land conveyed by him. Majors v. Majors, 58 Miss. 806, 1881 Miss. LEXIS 39 (Miss. 1881).

15. Mobile homes.

A debtor, who did not own the land on which her mobile home was located, could not claim the mobile home as exempt homestead property. Cobbins v. Henderson (In re Cobbins), 227 F.3d 302, 2000 U.S. App. LEXIS 23862 (5th Cir. Miss. 2000).

16. Waiver.

Executrix did not waive the homestead exemption by entering into a contractual relationship with the Mississippi Division of Medicaid on behalf of a decedent because the record did not support the idea that the decedent had any knowledge of the benefits a homestead exemption provided, nor that he intentionally waived his right to the benefit of that exemption since the contract did not provide any information pertaining to, or even mention, the significance of any exemption; there was no evidence of the decedent's intent to waive any of his rights because by entering into the contract, the decedent merely acknowledged Medicaid as a creditor of his estate, which estate had no property against which Medicaid could recover.

State v. Stinson (In re Estate of Darby), 68 So. 3d 702, 2011 Miss. App. LEXIS 96 (Miss. Ct. App.), cert. denied, 69 So. 3d 767, 2011 Miss. LEXIS 419 (Miss. 2011).

17. Relation to other statutes.

Section relation to partition of land prohibits the partition of spousal homestead property by chancery decree because the phrase "homestead property exempt from execution" is not intended to bring specific limitations on creditors' rights to other statutes. Therefore, a chancery court could not enter a partition of land owned by spouses as joint tenants with a right of survivorship. Noone v. Noone, 127 So. 3d 193, 2013 Miss. LEXIS 647 (Miss. 2013).

OPINIONS OF THE ATTORNEY GENERAL

Seven-year-old who is owner in fee simple title of property, whose mother does not claim homestead exemption on any other land in her name or in that of another child, and who occupies home with his mother, stepfather and younger brother may claim homestead exemption; such exemption is not limited to "head of family" so long as all statutory requisites are present. Barlow, Sept. 23, 1992, A.G. Op. #92-0639.

A homestead exemption claimant who is a bona fide resident of Mississippi, who owns and is occupying a home legally assessed on the land roll, but is displaying a license plate from another state on a vehicle, should be removed from the homestead exemption roll until such time he or she submits proof of full compliance with the Mississippi road and bridge privilege tax laws. Schrimpshire, March 30, 2007, A.G. Op. #07-00162, 2007 Miss. AG LEXIS 65.

RESEARCH REFERENCES

ALR.

Rights of surviving spouse and children in proceeds of sale of homestead in decedent's estate. 6 A.L.R.2d 515.

Endowment policy as life insurance within exemption law. 30 A.L.R.2d 751.

Homestead exemption as extending to rentals derived from homestead property. 40 A.L.R.2d 897.

Estate or interest in real property to which a homestead claim may attach. 74 A.L.R.2d 1355.

Contractual waiver of after-acquired homestead exemption. 82 A.L.R.2d 982.

Effect of divorce on homestead. 84 A.L.R.2d 703.

Validity of contractual stipulation or provision waiving debtor's exemption. 94 A.L.R.2d 967.

Choice of law as to exemption of property from execution. 100 A.L.R.3d 1235.

Recovery of damages for breach of contract to convey homestead where only one spouse signed contract. 5 A.L.R.4th 1310.

Lien of judgment on excess value of homestead. 41 A.L.R.4th 292.

Am. Jur.

31 Am. Jur. 2d, Exemptions §§ 251, 262.

40 Am. Jur. 2d, Homestead §§ 14 et seq.

13A Am. Jur. Pl & Pr Forms (Rev), Homestead, Forms 21 et seq. (preventing or setting aside forced sale of homestead).

13A Am. Jur. Pl & Pr Forms (Rev), Homestead, Forms 91, 92 (termination of homestead).

9A Am. Jur. Legal Forms 2d Homestead §§ 135: 11 et seq. (claim of homestead exemption).

9A Am. Jur. Legal Forms 2d Homestead §§ 135:73, 135:74 (declaration of abandonment of homestead).

9A Am. Jur. Legal Forms 2d Homestead §§ 135:91 et seq. (release or waiver of homestead).

13 Am. Jur. Legal Forms 2d, Mortgages and Trust Deeds § 179:309 (waiver of homestead).

6 Am. Jur. Proof of Facts, Homestead, Proof No. 1 (existence of homestead exemption).

6 Am. Jur. Proof of Facts, Homestead,

Proof No. 2 (termination of homestead exemption by removal from premises).

§ 85-3-23. Homestead exemption; land and buildings; insurance proceeds; personal property.

Every citizen of this state, male or female, being a householder shall be entitled to hold exempt from seizure or sale under execution or attachment the land and buildings owned and occupied as a residence by such person, also the proceeds of any insurance, fire or otherwise, on any such buildings destroyed or damaged by fire, tornado or otherwise, not to exceed in value, save as hereinafter provided, Seventy-five Thousand Dollars ($75,000.00), and personal property to be selected by him or her not to exceed in value Two Hundred Fifty Dollars ($250.00) or the articles specified as exempt to the head of a family; provided, however, that no sum or amount due, or to become due such person, nor any part thereof, for or on account of wages, salaries or commissions, shall in any proceedings be selected or claimed as exempt under this section. But husband or wife, widower or widow, over sixty (60) years of age, who has been an exemptionist under this section, shall not be deprived of such exemption because of not residing therein.

HISTORY: Codes, 1871, § 2140; 1880, § 1249; 1892, § 1971; 1906, § 2147; Hemingway's 1917, § 1822; 1930, § 1766; 1942, § 318, Laws, 1926, ch. 159; Laws, 1931, ch. 18; Laws, 1970, ch. 323, § 2; Laws, 1979, ch. 447, § 2; Laws, 1991, ch. 479, § 2, eff from and after July 1, 1991.

Cross References — Power of legislature to regulate sale of homesteads, see MS Const Art. 4, § 94.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Homestead exemption.
3. —Separate tracts or lots.
4. —Residence and occupancy.
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6. Selection of homestead.
7. Persons entitled.
8. Sale or transfer of homestead.
9. Mortgage on homestead.
10. Amount of homestead exemption.
11. Selection of personal property as exempt.
12. —Other statutory exemptions in lieu.
13. Sale or transfer of personal property.
14. Rights of survivors.

1. In general.

Garnishment constitutes "attachment" within statute exempting from attachment. First Nat'l Bank v. Ellison, 135 Miss. 42, 99 So. 573, 1924 Miss. LEXIS 20 (Miss. 1924).

This section [Code 1942, § 318] held to include unincorporated urban districts. Harris Ice Cream Co. v. Hartsock, 127 Miss. 271, 90 So. 7, 1921 Miss. LEXIS 222 (Miss. 1921).

2. Homestead exemption.

Creditor's argument that Miss. Code § 85-3-23 did not apply to debtors because a deed of trust was issued to secure a purchase money lien on the property and the homestead rights had not yet attached was without merit where the debtors had owned the property and had been occupying the property for some time prior to the time that the husband signed the deed of trust. Rhymes v. Countrywide Home Loans, Inc. (In re Rhymes), 2008 Bankr.

LEXIS 779 (Bankr. S.D. Miss. Mar. 14, 2008).

One claiming city residence as homestead may not also claim 80-acre tract about two and one-half miles from city residence, although value of both may not exceed exemption allowed. Nye v. Winborn, 120 Miss. 1, 81 So. 644, 1919 Miss. LEXIS 57 (Miss. 1919).

3. —Separate tracts or lots.

The homestead may consist of a tract partly in city and partly in country. Fitz Gerald v. Rees, 67 Miss. 473, 7 So. 341 (Miss. 1889).

Where lots separate from the residence are leased to one not a servant, they are not exempt. Rhyne v. Guevara, 67 Miss. 139, 6 So. 736, 1889 Miss. LEXIS 21 (Miss. 1889).

A tract separated from the residence lot by a railroad depot and right of way may be part of the homestead. Parisot v. Tucker, 65 Miss. 439, 4 So. 113, 1888 Miss. LEXIS 14 (Miss. 1888).

The homestead may include lots separated from the residence by a public street where used in connection with it. Acker v. Trueland, 56 Miss. 30, 1878 Miss. LEXIS 37 (Miss. 1878).

4. —Residence and occupancy.

One cannot claim as a homestead a tract owned by him on the ground that he is living on an adjoining tract in which he has no assignable interest. Davis v. Davidor, 200 Miss. 657, 27 So. 2d 371, 1946 Miss. LEXIS 335 (Miss. 1946).

Where a husband and his family slept and had their breakfast on property which they rented and which was noncontiguous to land owned by him, and on which they maintained a restaurant, in which they daily had their dinners and suppers and during an interval when, because of various transfers, the title to the restaurant property was in third parties, the husband executed a deed of trust on the restaurant property, which property was afterwards reconveyed to him, such property was not their homestead at the time the deed of trust was given by the husband. Meyers v. American Oil Co., 192 Miss. 180, 5 So. 2d 218, 1941 Miss. LEXIS 29 (Miss. 1941), limited, Pettis v. Brown, 203 Miss. 292, 33 So. 2d 809, 1948 Miss. LEXIS 267 (Miss. 1948).

Occupancy coupled with residence, citizenship, and status of being head of family perfects right so that it cannot be defeated because children remained at school when father removed. Roberts v. Thomas, 94 Miss. 219, 48 So. 408, 1908 Miss. LEXIS 46 (Miss. 1908).

Land, always occupied as homestead by claimant except for about 6 weeks when she lived with her husband on his father's place, was her homestead, although after separating from husband she rented part of her land for one year and stayed elsewhere at night but kept one room of the house and a horse and other animals on the land. Levis-Zukoski Mercantile Co. v. McIntyre, 93 Miss. 806, 47 So. 435, 1908 Miss. LEXIS 140 (Miss. 1908).

Owner of country homestead may purchase house in village, move thereto to educate children, qualify as elector and hold municipal office, without forfeiting right to claim country home as exempt, if he keeps actual possession in person or by some member of his family, cultivates it, continues to claim it as homestead and intends to return as soon as object of moving to village is accomplished. Gilmore v. Brown, 93 Miss. 63, 46 So. 840, 1908 Miss. LEXIS 111 (Miss. 1908).

5. —Buildings.

A storehouse in which the wife conducts business, separated by a fence from the residence, is a part of the homestead. Baldwin v. Tillery, 62 Miss. 378, 1884 Miss. LEXIS 88 (Miss. 1884).

One who owns and resides upon a town lot as a homestead may erect thereon any building or buildings necessary or convenient to his residence, or to the business in which he and his family may be engaged, and may hold the entire premises as homestead exemption if the value thereof be within the prescribed limit. Baldwin v. Tillery, 62 Miss. 378, 1884 Miss. LEXIS 88 (Miss. 1884).

6. Selection of homestead.

Judgment debtor may claim exemption any time before sale. Woods v. Bowles, 92 Miss. 843, 46 So. 414 (Miss. 1908).

A debtor, whose conveyance of land to his wife was set aside by his creditors as being fraudulent, could thereafter move upon the land and claim homestead exemption. Dulion v. Harkness, 80 Miss. 8, 31 So. 416, 1902 Miss. LEXIS 216 (Miss. 1902).

The right to make a selection of a homestead by statutory declaration is in the owner of the land, and if he die without making the selection his widow, to whom the homestead descended, as tenant in common with their children, has not the right of selection. Wiseman v. Parker, 73 Miss. 378, 19 So. 102, 1895 Miss. LEXIS 133 (Miss. 1895).

7. Persons entitled.

A married woman living with her husband is not the "head of a family" within the meaning of the statute. In re Logan, 1 F. Supp. 225, 1932 U.S. Dist. LEXIS 1697 (D. Miss. 1932).

A decree appointing a receiver impliedly limits the rights of the receiver to property which is not exempt from execution. Levy v. T. R. Rosell & Co., 82 Miss. 527, 34 So. 321, 1903 Miss. LEXIS 154 (Miss. 1903).

A contract by mercantile partners who are largely indebted, that their business shall be conducted by others, and that all money arising therefrom shall be applied pro rata to the debts of the partnership with authority to the managers to replenish the stock, but requiring that all proceeds shall be deposited in a bank and paid out ratably to his creditors, preclude the partners from claiming any exemption in the property covered by the contract. Levy v. T. R. Rosell & Co., 82 Miss. 527, 34 So. 321, 1903 Miss. LEXIS 154 (Miss. 1903).

Only a person who is both a citizen and a resident of this state, as well as a householder having a family, is entitled to homestead exemption. Vignaud v. Dean, 77 Miss. 860, 27 So. 881, 1900 Miss. LEXIS 37 (Miss. 1900); Meyer Bros. Drug Co. v. Fly, 105 Miss. 752, 63 So. 227, 1913 Miss. LEXIS 259 (Miss. 1913).

An unmarried man occupying alone the back room of his law office as a sleeping apartment and taking his meals at a hotel, but who provides a servant for and supports an aged grandfather living in a house owned by defendant, is not a "householder having a family," and is not entitled to the exemption of personal property allowed by this statute. Pearson v. Miller, 71 Miss. 379, 14 So. 731, 1893 Miss. LEXIS 80 (Miss. 1893).

A debtor may have a homestead exemption in land which he owns in common with others and as against creditors consent of the co-tenants to his occupancy is not essential. Lewis v. White, 69 Miss. 352, 13 So. 349, 1891 Miss. LEXIS 132 (Miss. 1891).

8. Sale or transfer of homestead.

Equity will enjoin the sale, under execution, of a homestead so heavily encumbered that the injury to the owner will be attended by no benefit to the creditor. Koen v. Brill, 75 Miss. 870, 23 So. 481, 1898 Miss. LEXIS 27 (Miss. 1898).

9. Mortgage on homestead.

Husband and wife may execute valid mortgage on after-acquired property used as homestead. Adkinson & Bacot Co. v. Varnado, 91 Miss. 825, 47 So. 113, 1907 Miss. LEXIS 215 (Miss. 1907).

10. Amount of homestead exemption.

Householder claiming exemption of rural land, held limited to $3,000 in value. Clegg v. Federal Reserve Bank, 169 Miss. 578, 153 So. 812, 1934 Miss. LEXIS 77 (Miss. 1934).

Creditors entitled to excess over homestead value where other property insufficient to pay debts. Marx v. Haley, 92 Miss. 113, 45 So. 612, 1907 Miss. LEXIS 17 (Miss. 1907).

Homestead in towns measured by value not exceeding $2,000 and not territorial extent. Stevens v. Wilbourn, 88 Miss. 514, 41 So. 66, 1906 Miss. LEXIS 167 (Miss. 1906).

Where a judgment-debtor owns jointly with his wife a city lot, he is entitled to a homestead exemption therein of two thousand dollars to be taken wholly from his one-half interest. Kripperdorf v. Wolfe, 70 Miss. 81, 12 So. 26 (Miss. 1892).

Part of a town lot on which a house is occupied as a residence at certain seasons of the year, and separated by a fence only from the main part of the lot on which is situated the house, usually occupied as a homestead, is exempt from execution against the owner, unless it be shown that the whole is worth more than two thousand dollars. Colbert v. Henley, 64 Miss. 374, 1 So. 631, 1886 Miss. LEXIS 75 (Miss. 1886).

The exemption of a homestead under the section [Code 1942, § 318] attaches to the extent of the value exempt only. State Nat'l Bank v. Lyons, 52 Miss. 181, 1876 Miss. LEXIS 193 (Miss. 1876).

11. Selection of personal property as exempt.

Although an exemption is a personal privilege and as a general rule cannot be taken advantage of, except by the execution or attachment debtor, an exception is that his wife can make the claim for him. Reid v. Halpin, 185 Miss. 396, 188 So. 310, 1939 Miss. LEXIS 165 (Miss. 1939).

Exemptionist may select personal property of $250 in value out of any that he has, regardless of kind or character. Hartfield v. Anderson, 156 Miss. 724, 126 So. 830, 1930 Miss. LEXIS 219 (Miss. 1930).

Where the aggregate value of all of the personal property seized is less than $250 no selection of the particular articles claimed as exempt is necessary. Bank of Gulfport v. O'Neal, 86 Miss. 45, 38 So. 630, 1905 Miss. LEXIS 66 (Miss. 1905).

An exemptionist may select a barrel of whisky, if within the prescribed value. Bernheim v. Andrews, 65 Miss. 28, 3 So. 75, 1887 Miss. LEXIS 9 (Miss. 1887).

12. —Other statutory exemptions in lieu.

Under former enactment of this section (Hemingway's Code, § 1822), wage exemption could be waived, and laborer residing in city, town, or village might hold statutory amount of personal property in lieu thereof. First Nat'l Bank v. Ellison, 135 Miss. 42, 99 So. 573, 1924 Miss. LEXIS 20 (Miss. 1924).

13. Sale or transfer of personal property.

Sale of goods exempt from execution is valid, even though made with intent to defraud seller's creditors. Orgill Bros. v. Gee, 152 Miss. 590, 120 So. 737, 1928 Miss. LEXIS 270 (Miss. 1928).

Evidence held not sufficient to show merchandise sold in gross without complying with law constituted exempt property of seller. Walton v. Walter Fisher Co., 146 Miss. 291, 111 So. 364, 1927 Miss. LEXIS 181 (Miss. 1927).

14. Rights of survivors.

Widow and children of deceased tenant, leaving nothing but exempt property, could, after unsuccessfully demanding tenant's share from landlord, recover in replevin. Williams v. Sykes, 170 Miss. 88, 154 So. 267, 154 So. 727, 1934 Miss. LEXIS 100 (Miss. 1934).

"Family," in eyes of homestead law, continues to exist so long as widow lives and remains widow. Miers v. Miers, 160 Miss. 746, 133 So. 133, 1931 Miss. LEXIS 135 (Miss. 1931).

Widow, being entitled to use and occupancy of homestead, was entitled to rents thereof, and would so continue during her life or widowhood unless she elected or consented otherwise. Miers v. Miers, 160 Miss. 746, 133 So. 133, 1931 Miss. LEXIS 135 (Miss. 1931).

RESEARCH REFERENCES

ALR.

Interest of vendee under executory contract as subject to execution, judgment lien, or attachment. 1 A.L.R.2d 727.

Exemption of insurance proceeds as available to assignee of policy. 1 A.L.R.2d 1031.

Rights of surviving spouse and children in proceeds of sale of homestead in decedent's estate. 6 A.L.R.2d 515.

Homestead exemption as extending to rentals derived from homestead property. 40 A.L.R.2d 897.

Estate or interest in real property to which a homestead claim may attach. 74 A.L.R.2d 1355.

Effect of divorce on homestead. 84 A.L.R.2d 703.

Am. Jur.

31 Am. Jur. 2d, Exemptions §§ 251, 252.

9A Am. Jur. Legal Forms 2d, Homestead §§ 135:11 et seq. (claim of homestead exemption).

§ 85-3-25. Homestead declaration; form; deposit with clerk of chancery court.

Any citizen entitled to a homestead and desiring to select the same and obtain the advantages of such selection, may make a declaration thereof to the following effect, namely:

"The State of Mississippi, Homestead declaration.
County of ________

"I, John Doe [or Nancy Roe], a citizen of said state and county, do declare that I am entitled to a homestead in said county, and that I have selected the same as follows: [Here describe the land and premises. Append plat if desired.]

"Witness my signature, this ________ day of ________, A. D. ________

"____________________"

The declaration shall be acknowledged or proved as a deed is required to be, and deposited in the office of the clerk of the chancery court for record, in a book to be kept for that purpose, and styled "Homestead Record."

HISTORY: Codes, 1892, § 1972; 1906, § 2148; Hemingway's 1917, § 1823; 1930, § 1767; 1942, § 319.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Selection of homestead.
3. Separate tracts or lots.

1. In general.

The language of Mississippi Code § 85-3-25 indicates that a homestead declaration is voluntary and not mandatory. Shows v. Watkins, 485 So. 2d 288, 1986 Miss. LEXIS 2380 (Miss. 1986).

A rural homesteader should ordinarily be entitled to as much as 160 acres for homestead purposes if such an amount of his land is so located as to be truly susceptible of being devoted to homestead purposes as a unit, and without giving the homestead laws an unreasonable application for the protection of the homesteader in that behalf. Horton v. Horton, 210 Miss. 116, 48 So. 2d 850, 1950 Miss. LEXIS 328 (Miss. 1950).

The provisions of this section [Code 1942, § 319] authorizing the filing of a declaration of homestead are prospective, and can have no application in cases of debts contracted before the code became operative. Hinds v. Morgan, 75 Miss. 509, 23 So. 35, 1897 Miss. LEXIS 130 (Miss. 1897).

2. Selection of homestead.

The husband, as head of the family, may bind the wife by his selection of a homestead if it is in good faith and not for the purpose of defeating her rights. Biglane v. Rawls, 247 Miss. 226, 153 So. 2d 665, 1963 Miss. LEXIS 295 (Miss. 1963).

Where grantor of the timber rights in tract exceeding one hundred sixty acres, to the deed for which timber his wife was not a party, failed to make a declaration of homestead or to petition the court for a designation of homestead, neither such grantor nor the court had the right to fix the allotment of the exempt homestead, the proper procedure in such case being an allotment by commissioners appointed by the court. Robert G. Bruce Co. v. Spears, 181 Miss. 786, 181 So. 333, 1938 Miss. LEXIS 119 (Miss. 1938).

Though a declaration as to a homestead as provided by statute and declaration's recordation are not required in all cases, it is convenient form of giving notice of purpose to return, though parties may not be actually residing thereon. Ritter v. Whitesides, 179 Miss. 706, 176 So. 728, 1937 Miss. LEXIS 81 (Miss. 1937).

Householder claiming exemption of rural land was limited to $3,000 in value. Clegg v. Federal Reserve Bank, 169 Miss. 578, 153 So. 812, 1934 Miss. LEXIS 77 (Miss. 1934).

Intention to occupy, coupled with placing of furniture on premises, insufficient to create exemption in absence of declaration. Chrismand v. Mauldin, 130 Miss. 259, 94 So. 1, 1922 Miss. LEXIS 200 (Miss. 1922).

A husband who has made a homestead declaration on record designating land of greater value than three thousand dollars, may convey a part thereof before revoking the declaration without his wife's joinder where the remainder of the land equals or exceeds said sum. Nixon v. Hewes, 80 Miss. 88, 31 So. 899, 1902 Miss. LEXIS 266 (Miss. 1902).

The right to select by a statutory declaration belongs solely to the owner of the lands, and where a husband dies without making a selection of homestead by such declaration, the widow has no right to select, but may have an allotment of a homestead as provided by statute (Code 1942, § 323). Wiseman v. Parker, 73 Miss. 378, 19 So. 102, 1895 Miss. LEXIS 133 (Miss. 1895).

If a husband had, during his life, selected the homestead, his widow would be confined to such selection. Wiseman v. Parker, 73 Miss. 378, 19 So. 102, 1895 Miss. LEXIS 133 (Miss. 1895).

3. Separate tracts or lots.

Neither the cases dealing only with urban property nor those dealing with an urban tract and a rural tract as constituting together one homestead are applicable to a case where rural lands are involved. Horton v. Horton, 210 Miss. 116, 48 So. 2d 850, 1950 Miss. LEXIS 328 (Miss. 1950).

Where a decedent resided on one tract of land and used such tract with another as a farm unit which consisted of less than 160 acres, the widow was entitled to claim both parcels of land as a homestead although they were not contiguous. Horton v. Horton, 210 Miss. 116, 48 So. 2d 850, 1950 Miss. LEXIS 328 (Miss. 1950).

One claiming city residence as homestead may not also claim 80-acre tract about two and one-half miles from city residence, although value of both does not exceed exemption allowed. Nye v. Winborn, 120 Miss. 1, 81 So. 644, 1919 Miss. LEXIS 57 (Miss. 1919).

If a homesteader lives on a forty-acre tract of land leased by him adjoining that to which he has title, and his farm is in part on both tracts, he may claim an exemption; but the homestead must be laid off just as if he owned the tract on which he resides. Hinds v. Morgan, 75 Miss. 509, 23 So. 35, 1897 Miss. LEXIS 130 (Miss. 1897).

RESEARCH REFERENCES

Am. Jur.

40 Am. Jur. 2d, Homestead §§ 78-82.

13 Am. Jur. Legal Forms 2d, Mortgages and Trust Deeds § 179:309 (waiver of homestead).

§ 85-3-27. Homestead declaration; effect.

The declaration, for not more than one hundred sixty (160) acres, and not exceeding in value Seventy-five Thousand Dollars ($75,000.00); or, if the homestead be in a city, town or village, not exceeding in value Seventy-five Thousand Dollars ($75,000.00) after being filed for record, shall be notice to all persons to be affected thereby; and shall bind the exemptionist, the spouse of the exemptionist if the exemptionist be married, and the creditors of the exemptionist until the exemptionist shall execute and file a new declaration which shall nullify the preceding one, and otherwise have like effect; and shall moreover entitle the exemptionist thereafter to hold the same as exempt to the extent of such value; but subject to contest and legal designation or allotment, if the exemptionist had declared for too much, or has insufficiently or improperly described the premises; and to contest by creditors on the ground that the exemptionist was not entitled to a homestead, and by the spouse of the exemptionist on the ground that it was intended to defraud or circumvent such spouse.

HISTORY: Codes, 1892, § 1973; 1906, § 2149; Hemingway's 1917, § 1824; 1930, § 1768; 1942, § 320; Laws, 1966, ch. 622, § 1; Laws, 1970, ch. 323, § 3; Laws, 1979, ch. 447, § 3; Laws, 1991, ch. 479, § 3; eff from and after July 1, 1991.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Limitations.
3. Effect of declaration.
4. Notice.

1. In general.

In this section [Code 1942, § 320] the words "was not entitled to a homestead" should not be construed literally; all that is necessary to entitle a judgment creditor to sell a particular tract of land under execution is that the proof show that neither the judgment debtor nor his wife is entitled to claim the specific property as a homestead which is sought to be sold under execution. Adams v. Bounds, 224 Miss. 518, 81 So. 2d 235, 1955 Miss. LEXIS 517 (Miss. 1955).

The provision of this section [Code 1942, § 320] allowing increase of exemption to heads of families who make of record their selection of homestead is beneficent. Chapman v. White Sewing-Mach Co., 76 Miss. 821, 25 So. 868, 1899 Miss. LEXIS 24 (Miss. 1899), modified, Chapman v. White Sewing-Mach. Co., 77 Miss. 890, 28 So. 749, 1900 Miss. LEXIS 57 (Miss. 1900).

2. Limitations.

Householder claiming exemption of rural land was limited to $3,000 in value. Clegg v. Federal Reserve Bank, 169 Miss. 578, 153 So. 812, 1934 Miss. LEXIS 77 (Miss. 1934).

3. Effect of declaration.

The husband, as head of the family, may bind the wife by his selection of a homestead if it is in good faith and not for the purpose of defeating her rights. Biglane v. Rawls, 247 Miss. 226, 153 So. 2d 665, 1963 Miss. LEXIS 295 (Miss. 1963).

A husband who has made a homestead declaration on record designating land of greater value than three thousand dollars, may convey a part thereof before revoking the declaration without his wife's joinder where the remainder of the land equals or exceeds such sum. Nixon v. Hewes, 80 Miss. 88, 31 So. 899, 1902 Miss. LEXIS 266 (Miss. 1902).

If a debtor, in making a homestead declaration, select land in which he has title only to an undivided half interest, he will be bound by the selection. Chapman v. White Sewing-Mach. Co., 77 Miss. 890, 28 So. 749, 1900 Miss. LEXIS 57 (Miss. 1900).

A debtor may select as his homestead one hundred and sixty-five acres of land owned by himself and wife as tenants in common, and such selection is binding on both him and his creditors when the value of the same does not exceed three thousand dollars. Chapman v. White Sewing-Mach. Co., 78 Miss. 438, 28 So. 735, 1900 Miss. LEXIS 75 (Miss. 1900).

4. Notice.

Though a declaration as to a homestead as provided by statute and declaration's recordation are not required in all cases, it is convenient form of giving notice of purpose to return, though parties may not be actually residing thereon. Ritter v. Whitesides, 179 Miss. 706, 176 So. 728, 1937 Miss. LEXIS 81 (Miss. 1937).

RESEARCH REFERENCES

ALR.

Enforcement of claim for alimony or support, or for attorneys' fees and costs incurred in connection therewith, against exemptions. 52 A.L.R.5th 221.

Am. Jur.

40 Am. Jur. 2d, Homestead §§ 81, 82.

13 Am. Jur. Legal Forms 2d, Mortgages and Trust Deeds § 179:309 (waiver of homestead).

§ 85-3-29. Homestead declaration; recording.

The clerk shall file, certify, record, and alphabetically index the declaration, in the same manner as deeds are required to be, and with like effect in all respects, and under like penalties.

HISTORY: Codes, 1892, § 1974; 1906, § 2150; Hemingway's 1917, § 1825; 1930, § 1769; 1942, § 321.

§ 85-3-31. Homestead designated by law when not selected.

The homestead of every citizen entitled to such an exemption who shall not select or who has improperly selected his homestead by declaration, shall be, namely: A tract of land in the form of, first, a square, or second, a parallelogram, if practicable, and composed, if practicable, of contiguous parcels, and including the dwelling house, and, if practicable, the other principal buildings, and not to exceed one hundred sixty (160) acres in area, nor Seventy-five Thousand Dollars ($75,000.00) in value. And in all cases where the homestead may be composed of detached parcels of land, it shall be made up of those nearest the forty (40) acre or other less tract containing the dwelling house.

HISTORY: Codes, 1892, § 1975; 1906, § 2151; Hemingway's 1917, § 1826; 1930, § 1770; 1942, § 322; Laws, 1970, ch. 323, § 4; Laws, 1979, ch. 447, § 4; Laws, 1991, ch. 479, § 4; eff from and after July 1, 1991.

JUDICIAL DECISIONS

1. In general.

In an action to determine the validity of a deed to property alleged to be homestead in which grantor's wife did not joint, where the evidence showed that the tract in controversy and a non-contiguous tract upon which grantor's dwelling was located were both used for timber, it was error for the chancellor to hold that the land in controversy was not homestead property, even though he found that the value of the other tract upon which the dwelling house was situated was in excess of the valuation mentioned in the homestead statute. Hendry v. Hendry, 300 So. 2d 147, 1974 Miss. LEXIS 1614 (Miss. 1974).

Notation on a deed by a husband whose remaining property exceeds that which he may claim as homestead, that the land therein described is no part of his homestead, amounts to a designation of homestead in the remaining property. Biglane v. Rawls, 247 Miss. 226, 153 So. 2d 665, 1963 Miss. LEXIS 295 (Miss. 1963).

A grantor retaining sufficient property to constitute a homestead elects to treat the retained property as a homestead. Biglane v. Rawls, 247 Miss. 226, 153 So. 2d 665, 1963 Miss. LEXIS 295 (Miss. 1963).

Where grantor of the timber rights in tract exceeding one hundred sixty acres, to the deed for which his wife was not a party, failed to make a declaration of homestead or to petition the court for a designation of homestead, neither such grantor nor the court had the right to fix the allotment of the exempt homestead, the proper procedure in such case being an allotment by commissioners appointed by the court. Robert G. Bruce Co. v. Spears, 181 Miss. 786, 181 So. 333, 1938 Miss. LEXIS 119 (Miss. 1938).

The condition of practicability annexed to the preference of one mode of allotment over another under this section [Code 1942, § 322] has reference to the rights and welfare of both the exemptionist and creditors. Wiseman v. Parker, 73 Miss. 378, 19 So. 102, 1895 Miss. LEXIS 133 (Miss. 1895).

Under this section [Code 1942, § 322], the allotment shall not necessarily be, first, a square, nor, second, a parallelogram; it need not inevitably include the buildings other than the residence, nor be composed, in any event, of contiguous parcels. Wiseman v. Parker, 73 Miss. 378, 19 So. 102, 1895 Miss. LEXIS 133 (Miss. 1895).

§ 85-3-33. Heirs may designate homestead.

In all cases where a deceased person has left a widow or husband, as the case may be, or other heirs at law, then such widow or husband or other heirs at law, or both, who may be entitled by law to inherit from the deceased person, shall be entitled to have the homestead exempt, whether selected, designated or declared for by said decedent in his lifetime or not, and such person or persons so entitled to inherit by law may select, designate or declare for such homestead on or any of the real property of which said decedent died seized and possessed, and have the same set apart to them, or either of them, as the homestead of the decedent.

HISTORY: Codes, 1892, § 1975; 1906, § 2151; Hemingway's 1917, § 1826; 1930, § 1770; 1942, § 322; Laws, 1970, ch. 323, § 4, eff from and after July 1, 1970.

JUDICIAL DECISIONS

1. In general.

In a suit by an heir of deceased grantor to enjoin removal of timber from grantor's homestead under a timber deed which was void as to homestead because the wife of grantor did not sign, where it appeared that the grantor did not specifically designate the 160 acres which constituted the homestead tract out of 300 acre tract covered by deed, and the court should have appointed commissioners under the statute to make the allotment. Thompson v. Dyess, 218 Miss. 770, 67 So. 2d 721, 1953 Miss. LEXIS 602 (Miss. 1953).

RESEARCH REFERENCES

ALR.

Operation and effect of antenuptial agreements to waive or bar surviving spouse's right to probate homestead or surviving family's similar homestead right or exemption. 65 A.L.R.2d 727.

§ 85-3-35. Allotment of homestead; selection of householders or freeholders to set off portion of land.

If the land on which the person claiming the exemption resides exceeds one hundred sixty (160) acres in quantity or Seventy-five Thousand Dollars ($75,000.00) in value, inclusive of improvements, and a proper selection of a homestead has not been made and filed for record, the officer holding an execution against such persons, and not finding other property to satisfy the same, shall levy the execution on the whole land, and shall notify the defendant, if to be found, and the plaintiff or his attorney, if in his county, each to select one (1) householder or freeholder; and each party may select one (1), and inform the officer of his selection, and the officer shall select a third; or, if defendant or plaintiff or his attorney be absent from the county, or if he shall not make a selection, or if the person selected will not act, the officer shall select the three (3) householders or freeholders, who, on oath to be administered by him, shall set off to such person a portion of the land, embracing the dwelling house and outhouses and not exceeding one hundred sixty (160) acres in quantity nor Seventy-five Thousand Dollars ($75,000.00) in value, and the allotment, distinctly indicated by metes and bounds or other sufficient description, shall be returned with the execution; and the levy of the execution shall be dismissed as to the part so allotted; and the officer may advertise and sell the remainder of the land. In making such allotment, the homestead shall be laid off as designated by law in case of the debtor's failure to select his homestead and file his declaration thereof for record.

HISTORY: Codes, 1857, ch. 61, art. 282; 1871, § 2136; 1880, § 1251; 1892, § 1976; 1906, § 2152; Hemingway's 1917, § 1827; 1930, § 1771; 1942, § 323; Laws, 1970, ch. 323, § 5; Laws, 1979, ch. 447, § 5; Laws, 1991, ch. 479, § 5, eff from and after July 1, 1991.

Cross References — Duty of appraisers of estates to set apart exempt property, see § 91-7-117.

Duty of appraisers of estates to report to court, see § 91-7-137.

Power of guardian to purchase home, see § 93-13-38.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Mode of allotment.
3. Sale of excess.
4. Rights of survivor.

1. In general.

In a proceeding to distribute the surplus fund remaining after a foreclosure sale of real property, the trial court erred in concluding that the defaulting landowners were entitled to a $15,000 homestead exemption where all but one of their creditors had obtained and enrolled judgments against them prior to the effective date of the law increasing the homestead exemption from $5,000 to $15,000; nor did the increased exemption apply to the remaining creditor where its claim was pending on the effective date of the new law. Thus, the $ 15,000 exemption was applicable to all of the creditors' claim. Builders Supply Co. v. Pine Belt Sav. & Loan Asso., 369 So. 2d 743, 1979 Miss. LEXIS 2257 (Miss. 1979).

A householder claiming exemption of rural land sought to be subjected to payment of his debts was limited to 160 acres not exceeding $3,000 in value. Clegg v. Federal Reserve Bank, 169 Miss. 578, 153 So. 812, 1934 Miss. LEXIS 77 (Miss. 1934).

2. Mode of allotment.

In a suit by an heir of deceased grantor to enjoin removal of timber from grantor's homestead under a timber deed which was void as to homestead because the wife of grantor did not sign, where it appeared that the grantor did not specifically designate the 160 acres which constituted the homestead tract out of 300 acre tract covered by deed, and the court should have appointed commissioners under the statute to make the allotment. Thompson v. Dyess, 218 Miss. 770, 67 So. 2d 721, 1953 Miss. LEXIS 602 (Miss. 1953).

Where grantor of the timber rights in tract exceeding one hundred sixty acres, to the deed for which timber his wife was not a party, failed to make a declaration of homestead or to petition the court for a designation of homestead, neither such grantor nor the court had the right to fix the allotment of the exempt homestead, the proper procedure in such case being an allotment by commissioners appointed by the court. Robert G. Bruce Co. v. Spears, 181 Miss. 786, 181 So. 333, 1938 Miss. LEXIS 119 (Miss. 1938).

Allotment was not void so as to authorize an injunction against an execution sale because of the manner in which sheriff selected freeholders. Edwards Bros. v. Bilbo, 138 Miss. 484, 103 So. 209, 1925 Miss. LEXIS 38 (Miss. 1925).

Where husband had not, during his lifetime, made any selection of homestead in land owned by him, the wife could have an allotment of the homestead as provided in this section [Code 1942, § 323), and the court could not make the allotment. Wiseman v. Parker, 73 Miss. 378, 19 So. 102, 1895 Miss. LEXIS 133 (Miss. 1895).

If a homestead in a town exceeds the statutory value, the sheriff cannot select and sell part of it. Rhyne v. Guevara, 67 Miss. 139, 6 So. 736, 1889 Miss. LEXIS 21 (Miss. 1889).

3. Sale of excess.

Excess of proceeds of sale over money secured by trust deed was not exempt from payment of probated claims against deceased's estate, since in ascertaining value of premises claimed as homestead legal encumbrances were not to be deducted. Clark v. Edwards, 180 Miss. 97, 177 So. 361, 1937 Miss. LEXIS 120 (Miss. 1937), overruled, Dogan v. Cooley, 184 Miss. 106, 185 So. 783, 1939 Miss. LEXIS 40 (Miss. 1939).

Where land is levied on under execution and the judgment-debtor has set off a part of it as a homestead the remainder is subject to sale, and he cannot afterwards, and before sale, dispose of the homestead so allotted to him, and move on the other land and claim homestead therein. Richie v. Duke, 70 Miss. 66, 12 So. 208, 1892 Miss. LEXIS 106 (Miss. 1892).

4. Rights of survivor.

Surviving widow entitled to occupy homestead of 160 acres regardless of value and heirs cannot have the property partitioned. Dickerson v. Leslie, 94 Miss. 627, 47 So. 659, 1909 Miss. LEXIS 319 (Miss. 1909).

Where all the property left by a decedent including money does not equal the exemption to which his widow was entitled, neither the administrator nor any one else can take the money from her or hold her liable for it, no exemption having been set aside to her. O'Brian Bros. v. Wilson, 82 Miss. 93, 33 So. 946 (Miss. 1903).

RESEARCH REFERENCES

Am. Jur.

40 Am. Jur. 2d, Homestead §§ 37 et seq.

§ 85-3-37. Allotment of homestead; premises not capable of division.

If the premises be not capable of being so divided as to set off the debtor a part, including the dwelling house and not exceeding Seventy-five Thousand Dollars ($75,000.00) in value, inclusive of improvements, or if the debtor has made a valid homestead declaration, and the homestead exceeds Seventy-five Thousand Dollars ($75,000.00) in value, the householders or freeholders shall value the land, inclusive of the dwelling house and buildings; and if the surplus of the valuation, over and above the exempt value, shall, within sixty (60) days, be paid by the execution-debtor, the premises shall not be sold; but if the surplus be not paid within sixty (60) days after the valuation, the officer may advertise and sell the premises, if the same shall bring a greater sum than the exempt value; and out of the proceeds of the sale he shall pay to the execution-debtor the sum of Seventy-five Thousand Dollars ($75,000.00).

HISTORY: Codes, 1857, ch. 61, art. 283; 1871, § 2137, 1880, § 1252; 1892, § 1977; 1906, § 2153; Hemingway's 1917, § 1828; 1930, § 1772; 1942, § 324; Laws, 1970, ch. 323, § 6; Laws, 1979, ch. 447, § 6; Laws, 1991, ch. 479, § 6, eff from and after July 1, 1991.

JUDICIAL DECISIONS

1. In general.

Under this section [Code 1942, § 324], specifically with respect to the phrase pertaining to the sale of homestead premises "if the same shall bring a greater sum than the exempt value," it is manifest that if the sale does not bring in excess of $3,000 it shall be abandoned and no further proceedings taken, but if it does bring more than $ 3,000 the officer conducting the sale must, out of the proceeds of the sale pay to the execution debtor the sum of $3,000, encumbrances being deductible in determining such value. Dogan v. Cooley, 184 Miss. 106, 185 So. 783, 1939 Miss. LEXIS 40 (Miss. 1939).

The rule of liberal construction prevails with respect to exemption laws of the state, doubtful questions being construed favorably to the homesteader. Dogan v. Cooley, 184 Miss. 106, 185 So. 783, 1939 Miss. LEXIS 40 (Miss. 1939).

Exemptionist may enjoin levy of execution on homestead claimed to exceed statutory value where provisions of this section [Code 1942, § 324] are not followed; method of valuation cannot be defeated by trial in equity on conflicting evidence, as to value not arrived at in accordance with this section [Code 1942, § 324]. Willis v. Allen, 131 Miss. 264, 95 So. 435, 1922 Miss. LEXIS 287 (Miss. 1922).

§ 85-3-39. Allotment of homestead; how contested by plaintiff.

If, before or after the return of the execution, the plaintiff shall file in the clerk's office from which the execution issued, or before the justice of the peace who issued it, as the case may be, an affidavit that he verily believes the allotment made to the debtor by the freeholders or householders to be incorrect, and the land so allotted by them, or some part of it, to be liable to sale under his execution, a summons shall be issued by the clerk or justice of the peace for the defendant, returnable to the next term of the court, requiring him to appear; and, on return of the summons executed, an issue shall be made up under the direction of the court and tried, as to whether the allotment were correctly and fairly made or not, and, if not, what part of the land ought to be sold under the execution; and, if it be found that any part of the land is subject to be sold, a venditioni exponas shall be issued for the sale of such part, and the plaintiff shall have judgment for costs; but if the issue be found for the defendant, he shall recover costs of the plaintiff.

HISTORY: Codes, 1871, § 2138; 1880, § 1253; 1892, § 1978; 1906, § 2154; Hemingway's 1917, § 1829; 1930, § 1773; 1942, § 325.

Editor's Notes — Pursuant to Miss. Const. Art. 6, § 171, all reference in the Mississippi Code to justice of the peace shall mean justice court judge.

§ 85-3-41. Allotment of homestead; how contested by defendant.

If a defendant be dissatisfied with the allotment, he may make affidavit before the sale, which affidavit may be made before the officer having the execution, that he verily believes it to be incorrect, specifying wherein he believes it so, and the officer shall suspend the sale of so much as the defendant so claims, and return the affidavit with the execution to the court to which it is returnable; and a summons shall issue for plaintiff, or, if he be a non-resident of this state, for his attorney of record in the case, if he have one; and if he be non-resident, and have no attorney in this state, publication may be made as in other cases; and when the process shall have been returned executed, or publication made, an issue shall be made up, and like proceeding had as when the plaintiff had filed an affidavit of dissatisfaction; and if the issue, in whole or in part, be found in favor of defendant, judgment shall be entered accordingly, and execution may go according to the judgment.

HISTORY: Codes, 1871, § 2139; 1880, § 1254; 1892, § 1979; 1906, § 2155; Hemingway's 1917, § 1830; 1930, § 1774; 1942, § 326.

§ 85-3-43. Homestead liable to debts when debtor ceases to reside thereon.

Whenever the debtor shall cease to reside on his homestead, it shall be liable to his debts, unless his removal be temporary, by reason of some casualty or necessity, and with the purpose of speedily reoccupying it as soon as the cause of his absence can be removed.

HISTORY: Codes, 1871, § 2144; 1880, § 1256; 1892, § 1981; 1906, § 2157; Hemingway's 1917, § 1832; 1930, § 1776; 1942, § 328.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Abandonment.
3. —Absence.
4. —Removal.

1. In general.

For a judgment debtor to avail himself of the rule that he may successfully interpose his claim of exemption as against the execution creditor at any time before sale under the execution if the debtor has actually got into the occupancy or reoccupancy of the land as a homestead at the time of the sale, the occupancy must be such as will stamp the place claimed as a homestead with the character then and there of an actual and permanent residence of the debtor and his family, and it is not sufficient that it has been made a mere part time lodging place, while the real residence of the family remains elsewhere. Bank of Cruger v. Hodge, 189 Miss. 356, 198 So. 26, 1940 Miss. LEXIS 129 (Miss. 1940).

This section [Code 1942, § 328] allows only a removal which may be justly adjudged as temporary and requires a speedy return as soon as the cause of the absence can be removed. Bank of Cruger v. Hodge, 189 Miss. 356, 198 So. 26, 1940 Miss. LEXIS 129 (Miss. 1940).

Homestead laws are to be liberally construed in favor of debtor; there is no abandonment unless it is clear that exemptionist moved from homestead with intention of not returning. Jackson v. Coleman, 115 Miss. 535, 76 So. 545, 1917 Miss. LEXIS 230 (Miss. 1917).

Ceasing to reside on a homestead renders it liable to debts, unless the removal be temporary by reason of casualty or necessity and with the purpose of speedily reoccupying. Moore v. Bradford, 70 Miss. 70, 11 So. 630, 1892 Miss. LEXIS 60 (Miss. 1892).

The word "casualty" refers to accident, while "necessity" may embrace considerations of health, or travel, or public business, or private business emergency of an exceptional and temporary character. Thompson, Lampkin & Co. v. Tillotson, 56 Miss. 36, 1878 Miss. LEXIS 38 (Miss. 1878).

2. Abandonment.

One may claim homestead exemption only in property owned and occupied as residence, and husband abandoned homestead rights when he voluntarily left property without intent to return. Joe T. Dehmer Distributors, Inc. v. Temple, 826 F.2d 1463, 1987 U.S. App. LEXIS 12486 (5th Cir. Miss. 1987).

75-year old homeowner was not divested of his rights to claim homestead exemption by virtue of his conviction for murder and sentence of life imprisonment, despite claim that he was not entitled to the exemption because he had no legal right to occupy the property and that by voluntarily murdering victim he had abandoned any claim to homestead that he would otherwise have. Roberts v. Grisham, 493 So. 2d 940, 1986 Miss. LEXIS 2588 (Miss. 1986).

Where a husband and wife, having occupied certain property as their homestead, acquired new property intending to live there permanently and make it their homestead, and moved to the new property, vacating the old homestead, the former homestead was not exempt from the claim of a creditor, and the proceeds of the sale of the former homestead which took place 2 weeks after the move to the new property, were not exempt. Patterson v. Adams, 245 So. 2d 13, 1971 Miss. LEXIS 1348 (Miss. 1971).

The test whether the husband abandoned any homestead rights under statutes invalidating conveyance of the homestead is whether the husband had abandoned the conjugal relation with his wife and the occupancy of the property, but the wrongful ouster of the spouse does not constitute a wilful abandonment; and if a spouse voluntarily separates from the other and abandons the intention of living with him or her through no fault of the latter, he or she has abandoned any homestead rights. Etheridge v. Webb, 210 Miss. 729, 50 So. 2d 603, 1951 Miss. LEXIS 310 (Miss. 1951).

An abandonment of a homestead may be obtained by a free and voluntary separation of the parties and the test is whether the husband was away from the homestead with the mature intention not to return to it. Etheridge v. Webb, 210 Miss. 729, 50 So. 2d 603, 1951 Miss. LEXIS 310 (Miss. 1951).

Evidence that decedent had formerly lived on land, but had ceased to do so for several months before his death, was insufficient to establish homestead. Wright v. Wright, 160 Miss. 235, 134 So. 197, 1931 Miss. LEXIS 202 (Miss. 1931).

Confinement in jail is not abandonment of homestead. Lindsey v. Holly, 105 Miss. 740, 63 So. 222, 1913 Miss. LEXIS 257 (Miss. 1913).

Where the exemptionist abandons a rural homestead and acquires another in town, but finally abandons the latter with the intention of reoccupying the country home, but is prevented by protracted sickness which ended in death, the country home becomes revested with its homestead character and is exempt from his debts. Ross v. Porter, 72 Miss. 361, 16 So. 906, 1894 Miss. LEXIS 122 (Miss. 1894).

3. —Absence.

Absence of seven years occasioned by economic depression and necessity of head of family securing employment elsewhere, with the intention to return when he should earn sufficient money to farm the homestead, constituted an abandonment of homestead where it appeared that the obstacle to returning might never be removed. Bank of Cruger v. Hodge, 189 Miss. 356, 198 So. 26, 1940 Miss. LEXIS 129 (Miss. 1940).

Land, always occupied as homestead by claimant except for about six weeks when she lived with her husband on his father's place, was her homestead although after separating from husband she rented part of land for one year and stayed elsewhere at night but kept one room of the house and a horse and other animals on the land. Levis-Zukoski Mercantile Co. v. McIntyre, 93 Miss. 806, 47 So. 435, 1908 Miss. LEXIS 140 (Miss. 1908).

Temporary absence animo revertendi will not constitute an abandonment. Campbell v. Adair, 45 Miss. 170, 1871 Miss. LEXIS 64 (Miss. 1871).

4. —Removal.

Trust deed executed by husband on 63-acre tract was not void on ground that tract constituted a "homestead" where, though tract had formerly been a homestead, husband and wife at time of execution of trust deed lived on a 188-acre tract to which they held title subject to a trust deed, and where removal from 63-acre tract was not occasioned by any casualty or necessity, and there was nothing to indicate that at time of removal there was any intention to return. Ritter v. Whitesides, 179 Miss. 706, 176 So. 728, 1937 Miss. LEXIS 81 (Miss. 1937).

Recital by husband in trust deed executed by him alone, that land involved was no part of his homestead, was sufficient evidence of his selection of new homestead, when he and wife were, in fact, occupying other land for living purposes, and recordation of such trust deed prevented the parties from acquiring any but subordinate rights in the land. Ritter v. Whitesides, 179 Miss. 706, 176 So. 728, 1937 Miss. LEXIS 81 (Miss. 1937).

Where husband at time of separation from wife removed from their homestead without intention to return, he thereby abandoned his and his wife's homestead rights therein, though wife remained in possession under color of deed given in settlement of claims for support. Lewis v. Ladner, 177 Miss. 473, 168 So. 281, 172 So. 312, 1936 Miss. LEXIS 230 (Miss. 1936).

That wife remained in occupancy of homestead abandoned by husband was immaterial as to existence of homestead rights, where by agreeing to a marital separation she consented to his removal. Lewis v. Ladner, 177 Miss. 473, 168 So. 281, 172 So. 312, 1936 Miss. LEXIS 230 (Miss. 1936).

One going to another state taking his furniture, and obtaining work there, his return being contingent upon obtaining more favorable work near homestead, has ceased to reside on homestead. Bank of Hattiesburg v. Mollere, 118 Miss. 154, 79 So. 87, 1918 Miss. LEXIS 68 (Miss. 1918).

Removal of owner to another state, where he organizes and becomes manager of business with no intention of returning if the business proves successful, is not temporary or by reason of casualty or necessity. Meyer Bros. Drug Co. v. Fly, 105

Miss. 752, 63 So. 227, 1913 Miss. LEXIS 259 (Miss. 1913).

Moving from homestead to conduct a boarding house in a near-by town with borrowed money secured by mortgage on the homestead was abandonment thereof, although the owner intended to return if she failed to pay for the place moved to. Bennett Bros. v. Dempsey, 94 Miss. 406, 48 So. 901, 1908 Miss. LEXIS 55 (Miss. 1908).

Owner of country homestead may purchase house in village, move thereto to educate children, qualify as elector and hold municipal office, without forfeiting right to claim country home as exempt, if he keep actual possession in person or by some member of his family, cultivates it, continues to claim it as homestead and intends to return as soon as object of moving to village is accomplished. Gilmore v. Brown, 93 Miss. 63, 46 So. 840, 1908 Miss. LEXIS 111 (Miss. 1908).

Where a husband owning a homestead took up his residence in another state, at the direction of his employer, but after being discharged did not return, the removal constituted an abandonment. Salter v. Embrey, 18 So. 373 (Miss. 1895).

RESEARCH REFERENCES

Am. Jur.
40 Am. Jur. 2d, Homestead §§ 172 et seq.

§ 85-3-45. Repealed.

Repealed by Laws, 1979, ch. 447, § 7, eff from and after July 1, 1979.

§ 85-3-45. [Codes, 1880, § 1259; 1892, § 1984; 1906, § 2160; Hemingway's 1917, § 1835; 1930, § 1779; 1942, § 331]

Editor's Notes — Former § 85-3-45 pertained to the extent of a wife's homestead exemption.

§ 85-3-47. Property not exempt from execution.

Property shall not be exempt from execution when the purchase-money thereof forms, in whole or in part, the debt on which the judgment is founded; but if the judgment be not in whole for purchase-money, and the execution be levied on property exempt but for the provisions hereof, and the exemptionist pay or tender the amount of purchase-money included in the judgment before sale, the property shall be released; nor shall any property be exempt from sale for nonpayment of taxes or assessments, or for any labor done thereon, or materials furnished therefor, or when the judgment is for labor performed or upon a forfeited recognizance or bail bond.

HISTORY: Codes, 1857, ch. 61, art. 284; 1871, § 2142; 1880, § 1255; 1892, § 1980; 1906, § 2156; Hemingway's 1917, § 1831; 1930, § 1775; 1942, § 327.

Cross References — Owelty being a lien on property, see § 11-21-33.
Requirement of bond of indemnity, see § 13-3-157.
Definition of "purchase money security interest" under Uniform Commercial Code-Secured Transaction, see § 75-9-107.
Secured party filing with respect to purchase money security interest, see § 75-9-301.
Priorities among conflicting security interests in the same collateral, see § 75-9-312.
Mortgage for purchase money of land, see § 89-1-45.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Judgment for purchase money.
3. Debt for labor.

1. In general.

Court will not ingraft other exceptions on exemption law; exempt property is not subject to execution for alimony. Jackson v. Coleman, 115 Miss. 535, 76 So. 545, 1917 Miss. LEXIS 230 (Miss. 1917).

Homestead is not subject to alimony where children are involved, unless pleadings and decree show necessity for lien thereon. Jackson v. Coleman, 115 Miss. 535, 76 So. 545, 1917 Miss. LEXIS 230 (Miss. 1917).

The object and effect of the section [Code 1942, § 327] is to abolish all exemptions against the specified demands, and this consequence follows regardless of the legal process adopted for the collection of such demands; The test of exemption or non-exemption is not the form of action pursued, but the consideration of the debt due. Ransom v. Duff, 60 Miss. 901, 1883 Miss. LEXIS 31 (Miss. 1883).

2. Judgment for purchase money.

Where a writ of seizure is sued out to take and sell exempt property to recover unpaid purchase money, a judgment-creditor of the defendant herein has no right to intervene and contest the plaintiff's right to a judgment and special execution. Bernheim v. Andrews, 65 Miss. 28, 3 So. 75, 1887 Miss. LEXIS 9 (Miss. 1887).

Homestead exemption cannot be rightfully claimed against a judgment founded on a debt for the purchase-money thereof. Patrick v. Rembert, 55 Miss. 87, 1877 Miss. LEXIS 108 (Miss. 1877).

3. Debt for labor.

The statute provides that property is not exempt "from any labor done thereon, or materials furnished therefor," regardless of whether the debt has been reduced to a judgment or has been enforced through an execution sale. In re Mitchell, 276 B.R. 142, 2001 Bankr. LEXIS 223 (Bankr. N.D. Miss. 2001).

Conveyance of a homestead by the husband alone in settlement of a claim for labor is governed by Code 1906, § 2159 [Code 1942, § 330] and not by Code 1906, § 2156 [Code 1942, § 327]. Chatman v. Poindexter, 101 Miss. 496, 58 So. 361, 1911 Miss. LEXIS 163 (Miss. 1911).

The judgment of a justice of the peace, in advance of any claim of exemption that, in consequence of any demand for labor performed, all of the defendant's property is liable without benefit of exemption, is a nullity. Eskridge v. Rutland, 77 Miss. 784, 27 So. 610, 1900 Miss. LEXIS 14 (Miss. 1900).

A debt for labor performed in the lifetime of a deceased debtor whose estate is insolvent may, on proper proceedings in the chancery court, after its allowance as to amount by said court, be enforced against the exempt property of his estate, although not reduced to judgment and therefore not within the letter of the statute. Mitchener v. Robins, 73 Miss. 383, 19 So. 103, 1895 Miss. LEXIS 134 (Miss. 1895).

RESEARCH REFERENCES

ALR.

Interest of vendee under executory contract as subject to execution, judgment lien, or attachment. 1 A.L.R.2d 727.

Failure to appear, and the like, resulting in forfeiture or conditional forfeiture of bail, as affecting right to second admission to bail in same noncapital criminal case. 29 A.L.R.2d 945.

Am. Jur.

40 Am. Jur. 2d, Homestead §§ 98 et seq.

§ 85-3-49. Exempt property may be disposed of.

The exempt property, real or personal, disposed of by the owner, shall not by disposal become liable to the debts of the owner; and any debtor leaving this state may take with him his personal property which is exempt from execution.

HISTORY: Codes, 1871, § 2143; 1880, § 1257; 1892, § 1982; 1906, § 2158; Hemingway's 1917, § 1833; 1930, § 1777; 1942, § 329.

Cross References — Nonresidents, absent or absconding debtors, see § 11-31-1.
Affidavit for attachment against debtors, see § 11-33-9.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Residence, requirement of.
3. Conveyance.
4. Sale by land contract.
5. Execution of mortgage.
6. Rights of survivor.

1. In general.

Where a decedent died leaving no surviving spouse, child or grandchild, the homestead exemption expired with her death and was not valid as against unpaid claims against her estate, even though the decedent left a will devising her previously exempt homestead property to her ex-husband; the specific language of § 91-1-21 does not continue a decedent's homestead exemption for anyone other than a surviving spouse, children or grandchildren, and consequently there was no exemptionist who could defeat the claim against the estate's homestead property. Matter of Memorial Hosp. v. Franzke (In re Estate of Franzke), 634 So. 2d 117, 1994 Miss. LEXIS 132 (Miss. 1994).

A homestead may not be subjected to the debts of a decedent. Mills v. Mills, 279 So. 2d 917, 1973 Miss. LEXIS 1495 (Miss. 1973).

Exemption laws are construed liberally in favor of the owner of the property exempted. Bank of Myrtle v. Garrison, 183 Miss. 526, 184 So. 291, 1938 Miss. LEXIS 265 (Miss. 1938).

Exemptionist may dispose of his exempt property at pleasure and may take it out of the state. Borodofski v. Feld, 88 Miss. 31, 40 So. 816, 1906 Miss. LEXIS 138 (Miss. 1906).

The policy of the section [Code 1942, § 329] is to free the exempt property from forfeiture to creditors if the debtor sell it; The words "disposed of" are very broad, and include any of the modes by which title may be transmitted. Meacham v. Edmonson, 54 Miss. 746, 1877 Miss. LEXIS 93 (Miss. 1877).

2. Residence, requirement of.

Under this section [Code 1942, § 329], Code 1942, § 333, providing that exemptions shall be allowed in favor of residents of state only, cannot refer to vendees, heirs, or legatees, but to the person to whom exemption right is given. Borodofski v. Feld, 88 Miss. 31, 40 So. 816, 1906 Miss. LEXIS 138 (Miss. 1906).

3. Conveyance.

Where a homestead is sold by a sale in which the reasonable price paid for the homestead provides no surplus above the amount of the homestead exemption and prior encumbrances, a lien does not follow the property and the proceeds of the sale are exempt. McMillan v. Aru, 773 So. 2d 355, 2000 Miss. App. LEXIS 177 (Miss. Ct. App. 2000).

A lien that predates the sale of a homestead does not become effective if seller leaves the residence before the deed is recorded; once the debtor has executed a deed, there is neither statutory command nor equitable basis for the creditor to gain some advantage because the debtor then moves prior to the filing of the instrument. McMillan v. Aru, 773 So. 2d 355, 2000 Miss. App. LEXIS 177 (Miss. Ct. App. 2000).

Owners who sell a homestead that has judgment liens filed against it must not by the date of sale have established a new homestead; if the homestead owner has not abandoned the old home and made a full-time residence at a new one prior to the date that a deed is executed, the exemption still exists; thus, this section countenances the normal process of selling property, with extra care needing to be shown by the seller not to establish a new homestead until the time that the conveyance is made. McMillan v. Aru, 773 So. 2d 355, 2000 Miss. App. LEXIS 177 (Miss. Ct. App. 2000).

Under the statute, the proceeds of a voluntary sale of a homestead are exempt under all circumstances, regardless of the vendor's continuing to be a householder, or his acquiring another homestead, or the intent with which he keeps the proceeds. Davis v. Lammons, 246 Miss. 624, 151 So. 2d 907, 1963 Miss. LEXIS 487 (Miss. 1963).

Where, at the time the husband conveyed real property to his wife, the parties and their children were residing on the property and had been for a number of years, no new home had been acquired by the husband, and, after the husband had left the city, the wife and the children continued to occupy the property, the property was the homestead of the parties, and the husband had a right to convey to his wife the extent and value of the homestead regardless of his intention toward his creditors. 229 Miss. 687, 91 So. 2d 831.

Judgment lien does not attach to exempt homestead, and exemptionist can convey homestead unaffected by enrolled judgment. De Bardeleben Coal Corp. v. Parker, 164 Miss. 728, 144 So. 474, 1932 Miss. LEXIS 245 (Miss. 1932).

Where homestead, at time of conveyance, was occupied as such, judgment lien did not extend to it and did not attach thereto when exemptionist moved. De Bardeleben Coal Corp. v. Parker, 164 Miss. 728, 144 So. 474, 1932 Miss. LEXIS 245 (Miss. 1932).

Exemptionist cannot convey land not his homestead free from lien of existing judgment. Bank of Philadelphia v. Posey, 130 Miss. 530, 92 So. 840, 1922 Miss. LEXIS 176 (Miss. 1922).

Attempt of wife to convey homestead without joinder of husband did not subject it to liability for her debts. Levis-Zukoski Mercantile Co. v. McIntyre, 93 Miss. 806, 47 So. 435, 1908 Miss. LEXIS 140 (Miss. 1908).

4. Sale by land contract.

A husband who had been an exemptioner did not lose his right to exemption by a sale of the property after the death of his wife at a time when he was over sixty years of age, nor did the fact that he reacquired the homestead on a rescission of the contract for the sale of the land affect his right to exemption. Bank of Myrtle v. Garrison, 183 Miss. 526, 184 So. 291, 1938 Miss. LEXIS 265 (Miss. 1938).

5. Execution of mortgage.

Execution of a mortgage on exempt property is not a disposal within the meaning of this section [Code 1942, § 329]. Bennett Bros. v. Dempsey, 94 Miss. 406, 48 So. 901, 1908 Miss. LEXIS 55 (Miss. 1908).

6. Rights of survivor.

It is clearly the purpose of this section [Code 1942, § 329] and Code 1930, § 1765 [Code 1942, § 317] to give the surviving husband or wife who has been an exemptionist, the benefit of the exemption if the survivor is over sixty years of age at the time of the partner's death; to give the right to retain the proceeds of the sale of the homestead, should it be best to sell it. Bank of Myrtle v. Garrison, 183 Miss. 526, 184 So. 291, 1938 Miss. LEXIS 265 (Miss. 1938).

§ 85-3-51. Exemptions allowed to residents only.

The exemptions in this chapter shall be allowed in favor of residents of this state only.

HISTORY: Codes, 1892, § 1986; 1906, § 2162; Hemingway's 1917, § 1838; 1930, § 1781; 1942, § 333.

Cross References — Aliens holding land, see § 89-1-23.

JUDICIAL DECISIONS

ANALYSIS

1. Residence.
2. Persons subject to residence requirement.

1. Residence.

Mere fact that deceased was non-resident will defeat exemption of bequest of life insurance to resident. Borodofski v. Feld, 88 Miss. 31, 40 So. 816, 1906 Miss. LEXIS 138 (Miss. 1906).

Only a person who is both a citizen and a resident of this state, as well as a householder having a family, is entitled to a homestead exemption. Vignaud v. Dean, 77 Miss. 860, 27 So. 881, 1900 Miss. LEXIS 37 (Miss. 1900); Meyer Bros. Drug Co. v. Fly, 105 Miss. 752, 63 So. 227, 1913 Miss. LEXIS 259 (Miss. 1913).

2. Persons subject to residence requirement.

This section [Code 1942, § 333] as applied to exemption of the proceeds of insurance payable to decedent's executor or administrator (Code 1942, § 309), cannot refer to vendees, heirs or legatees, but to the person to whom the exemption right is given. Borodofski v. Feld, 88 Miss. 31, 40 So. 816, 1906 Miss. LEXIS 138 (Miss. 1906).

RESEARCH REFERENCES

Am. Jur.

31 Am. Jur. 2d, Exemptions §§ 238 et seq.

40 Am. Jur. 2d, Homestead § 14.

§ 85-3-52. Judgment or claim of another state or political subdivision for failure to pay income tax on pension or retirement benefits.

(1) A judgment or claim in favor of another state or political subdivision of another state for failure to pay that state's or that political subdivision's income tax on benefits received from a pension or other retirement plan shall not be a lien on any property in this state, real, personal or mixed, that is owned by a resident of this state.

(2) As used in this section, "pension or other retirement plan" includes:

(a) An annuity, pension, or profit-sharing or stock bonus or similar plan established to provide retirement benefits for an officer or employee of a public or private employer or for a self-employed individual;

(b) An annuity, pension, or military retirement pay plan or other retirement plan administered by the United States; and

(c) An individual retirement account.

HISTORY: Laws, 1995, ch. 565, § 2, eff from and after July 1, 1995.

Cross References — Enforcement of lien on enrolled judgment generally, see §§ 11-7-191, 11-7-195.

Filing of copies of foreign judgments and effect thereof, see § 11-7-303.

RESEARCH REFERENCES

CJS.

85 C.J.S., Taxation §§ 1209 et seq.

CHAPTER 5.

JOINT AND SEVERAL DEBTORS

Sec.

85-5-1. Effect of releasing one or more joint debtors.
85-5-3. Judgment against one debtor does not affect rights against others.
85-5-5. Repealed.
85-5-7. Limitation of joint and several liability for damages caused by two or more persons; contribution between joint tortfeasors; determination of percentage of fault; liability of medical defendants for economic and noneconomic damages.

§ 85-5-1. Effect of releasing one or more joint debtors.

In all cases of joint or joint and several indebtedness, the creditor may settle or compromise with and release any one or more of such debtors; and the settlement or release shall not affect the right or remedy of the creditor against the other debtors for the amount remaining due and unpaid, and shall not operate to release any of the others of the said debtors; and all mortgages or securities for the said indebtedness shall remain in full force against the debtors not released, in favor of the creditor, and also in favor of such of the debtors as may be entitled to contribution, payment, or reimbursement from others of said debtors, and the right of payment, contribution or reimbursement, as among themselves, shall not be affected by this section; and if any debtor, so released, shall have paid more than his ratable share of the whole debt, the whole amount paid by him shall be credited, and if less than his ratable share, then the full amount of his ratable share shall be credited, and the other debtors shall be liable for the residue.

HISTORY: Codes, Hutchinson's 1848, ch. 38, art. 11; 1857, ch. 47, art. 1; 1871, § 2263; 1880, § 1003; 1892, § 2352; 1906, § 2682; Hemingway's 1917, § 2169; 1930, § 2027; 1942, § 334.

Cross References — Discontinuance of suit against indorsers of negotiable instruments or against parties secondarily liable thereon, see § 75-13-5.

Law of principal and surety, see §§ 87-5-1 et seq.

Payment extinguishing mortgage, see § 89-1-49.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Actions against joint or joint and several debtors.
3. —Release-nonjoinder of joint debtors.
4. —Discontinuance of suit as to some but not all.
5. Amount to be credited.

1. In general.

Statute relating to settlement or compromise in cases of joint or joint and several indebtedness is intended to encourage plaintiffs to pursue their claims, while at the same time creating an atmosphere ripe for settlement. McBride v. Chevron U.S.A., 673 So. 2d 372, 1996 Miss. LEXIS 132 (Miss. 1996).

Under statute governing compromise and settlement in cases of joint or joint and several indebtedness, when a nonsettling defendant believes it paid more than the jury's apportioned fault, it can seek contribution from settling defendants. McBride v. Chevron U.S.A., 673 So. 2d 372, 1996 Miss. LEXIS 132 (Miss. 1996).

This provision does not apply to prevent the release of an indorser of a note from discharging subsequent indorsers. Fish Meal Co. v. Brondum, 242 Miss. 573, 135 So. 2d 825, 1961 Miss. LEXIS 594 (Miss. 1961).

While abolishing all distinctions as to remedies upon joint and several obligations, the statute does not abolish distinctions in substance between such obligations. Wisdom v. Guess Drycleaning Co., 5 F. Supp. 762, 1934 U.S. Dist. LEXIS 1885 (D. Miss. 1934).

This statute does not enable one to declare upon a joint obligation and recover upon a several one. United States v. Ewing, 19 F.2d 378, 1927 U.S. Dist. LEXIS 1146 (D. Miss. 1927).

2. Actions against joint or joint and several debtors.

This section [Code 1942, § 334] did not apply where bank receiver, by court's authority, released first indorser on note payable to bank and sought to collect balance due from second indorser, since second indorser was not a "joint and several debtor." Thompson v. Gore, 180 Miss. 560, 178 So. 81, 1938 Miss. LEXIS 15 (Miss. 1938).

Guarantors jointly executing guaranty were primarily and equally liable to guarantee. Enochs & Flowers, Ltd. v. Roell, 170 Miss. 44, 154 So. 299, 1934 Miss. LEXIS 111 (Miss. 1934).

A mortgagor and his grantee assuming mortgage debt are not joint debtors of the mortgagee within meaning of this statute. Gilliam v. McLemore, 141 Miss. 253, 106 So. 99, 1925 Miss. LEXIS 213 (Miss. 1925).

Where the grantee of a mortgagor recited in the deed that he assumes the mortgage debt, the grantee becomes the principal debtor with the mortgagor as his surety, upon acceptance or ratification by mortgagee. Gilliam v. McLemore, 141 Miss. 253, 106 So. 99, 1925 Miss. LEXIS 213 (Miss. 1925).

Bringing of suit by a mortgagee after material change of status of parties was not an acceptance of mortgagor's grantee as mortgagee's primary debtor. Gilliam v. McLemore, 141 Miss. 253, 106 So. 99, 1925 Miss. LEXIS 213 (Miss. 1925).

Proceeds from life insurance policy on husband's life payable to wife were not exempt from judgment against her on note signed by both as joint makers, since payee had the right to proceed against either one or both of the joint makers until payment was made, notwithstanding as between husband and wife she was a mere surety. Goza v. Provine, 140 Miss. 315, 105 So. 534, 1925 Miss. LEXIS 264 (Miss. 1925).

3. —Release-nonjoinder of joint debtors.

Municipal street paving contractor was not necessary party to suit on his surety bonds for amount due complainant for cement supplied to contractor. Marquette Cement Mfg. Co. v. Fidelity & Deposit Co., 173 Miss. 164, 158 So. 924, 1935 Miss. LEXIS 191 (Miss. 1935).

In action on partnership notes, one partner was not an indispensable party either to rendition of personal judgment against codefendants or to order directing sale of collateral, since defendants' obligation was joint and several, and judgment against some of them would not affect plaintiff's right as to others unless satisfaction was obtained. Enochs-Flowers, Ltd. v. Bank of Forest, 172 Miss. 36, 157 So. 711, 159 So. 407, 1934 Miss. LEXIS 385 (Miss. 1934).

In a suit in chancery on a guardian's bond against the heirs of a deceased surety thereon, the nonjoinder of the other sureties on the bond or the principal or his legal representative, is not cause for demurrer. Horne v. Tartt, 76 Miss. 304, 24 So. 971, 1898 Miss. LEXIS 123 (Miss. 1898).

In such a suit the heirs of a deceased surety and those holding under him the property of the decedent, are proper parties where the estate has been finally administered. Horne v. Tartt, 76 Miss. 304, 24 So. 971, 1898 Miss. LEXIS 123 (Miss. 1898).

4. —Discontinuance of suit as to some but not all.

Guarantee having sued all guarantors, could properly discontinue action against one without thereby involving res judicata doctrine. Enochs & Flowers, Ltd. v. Roell, 170 Miss. 44, 154 So. 299, 1934 Miss. LEXIS 111 (Miss. 1934).

Discontinuance of a suit against one of two jointly and severally liable guarantors did not affect a creditor's right to hold the remaining guarantor liable for the amount due and unpaid. Woods-Tucker Leasing Corp. v. Kellum, 641 F.2d 210, 1981 U.S. App. LEXIS 18778 (5th Cir. Miss. 1981).

5. Amount to be credited.

Release of some signers of accommodation note on adequate consideration held to entitle others only to have pro rata shares of released persons credited on note. Yazoo Delta Mortg. Co. v. Harlow, 150 Miss. 105, 116 So. 441, 1928 Miss. LEXIS 117 (Miss. 1928).

RESEARCH REFERENCES

ALR.

Release of one joint tortfeasor as discharging liability of others under Uniform Contribution Among Tortfeasors Act and other statutes expressly governing effect of release. 6 A.L.R.5th 883.

Release of joint tortfeasor. 6 A.L.R.5th 883.

Am. Jur.

18 Am. Jur. 2d, Contribution §§ 8 et seq.

66 Am. Jur. 2d, Release §§ 35 et seq.

5 Am. Jur. Legal Forms 2d, Compromise and Settlement § 63:66 (compromise with one debtor-judgment to be taken against codebtors).

5A Am. Jur. Legal Forms 2d, Contributions § 69:6 (agreement by parties equally liable to contribute toward common liability).

5A Am. Jur. Legal Forms 2d, Contributions § 69:8 (optional provisions; in release-negating need for contribution between joint tortfeasors).

10A Am. Jur. Legal Forms 2d, Judgments § 157:40 (release of one of several judgment debtors).

CJS.

18 C.J.S., Contribution §§ 10, 11.

76 C.J.S., Release §§ 47, 48, 51.

§ 85-5-3. Judgment against one debtor does not affect rights against others.

In any action founded on a joint or joint and several bond, covenant, bill of exchange, promissory note, or other contract, or on a contract or liability of copartners, it shall be lawful to sue any one or more of the parties liable on such bond, covenant, bill of exchange, promissory note, or other contract or liability; and separate suits may be brought against the representatives of such of the parties as have died, or joint suits may be brought against the representatives of the deceased party and those who are alive and bound therein; and the rendition of judgment against one or more joint or joint and several debtors shall not affect any right of the plaintiff as to the other parties, unless satisfaction has been obtained.

HISTORY: Codes, 1880, § 1134; 1892, § 2353; 1906, § 2683; Hemingway's 1917, § 2170; 1930, § 2028; 1942, § 335.

Cross References — Bringing suits before justices of the peace against two or more defendants who are jointly or jointly and severally liable, see § 11-9-103.

Joint liability of sureties on a claimant's bond for trial of right of property, see § 11-23-21.

Attachment against one or more of joint debtors, see § 11-33-3.

Attachments against nonresidents jointly indebted, see § 11-33-7.

Joint and several liability on a negotiable instrument, see § 75-3-118.

Suits on indorsed bills and notes, see § 75-13-3.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Actions against joint or joint and several debtors.
3. —Pleadings.
4. —Necessary and proper parties.
5. —Discontinuance as to some but not all.
6. —Proof.
7. —Judgment.
8. Settlements.

1. In general.

This provision does not apply to prevent the release of an indorser of a note from discharging subsequent indorsers. Fish Meal Co. v. Brondum, 242 Miss. 573, 135 So. 2d 825, 1961 Miss. LEXIS 594 (Miss. 1961).

While abolishing all distinctions as to remedies upon joint and several obligations, the statute does not abolish distinction in substance between such obligations. Wisdom v. Guess Drycleaning Co., 5 F. Supp. 762, 1934 U.S. Dist. LEXIS 1885 (D. Miss. 1934).

Statute relating to liability of surety on sheriff's bond held not in conflict with statute relating to recovery against sureties generally. State ex rel. Weems v. United States Fidelity & Guaranty Co., 157 Miss. 740, 128 So. 503, 1930 Miss. LEXIS 318 (Miss. 1930).

Statute abolishes common law rule that all persons jointly liable on contract, express or implied, must be sued jointly. J. B. White's Garage, Inc. v. Boyd, 149 Miss. 383, 115 So. 334, 1928 Miss. LEXIS 22 (Miss. 1928).

This section [Code 1942, § 335] abolishes all distinctions in remedies upon joint and several obligations and makes them all joint and several. Steen v. Finley, 25 Miss. 535, 1853 Miss. LEXIS 24 (Miss. 1853).

2. Actions against joint or joint and several debtors.

Contract for legal services between attorney and clients for recovery of property whereby clients assigned percentage of recovery to attorney in payment for services is considered separable from invalid contract by wife to pay attorney for services rendered by him for wife in recovery of her separate property, and hence, interest assigned to attorney by clients was liable to be subjected to claim of bank to whom attorney had pledged fee in consideration of renewal of a note. Martin v. First Nat'l Bank, 176 Miss. 338, 164 So. 896, 1936 Miss. LEXIS 96 (Miss. 1936).

Proceeds from life insurance policy on husband's life, payable to wife, were not exempt from judgment against her on note signed by both as joint makers, since payee had the right to proceed against either one or both of the joint makers until payment was made, notwithstanding as between husband and wife she was a mere surety. Goza v. Provine, 140 Miss. 315, 105 So. 534, 1925 Miss. LEXIS 264 (Miss. 1925).

Under this section [Code 1942, § 335] the separate property of a nonresident member of a firm domiciled in this state may be attached by firm creditors on the ground of such nonresidence, notwithstanding statutory provision making partnership property liable to attachment where grounds, other than nonresidence, exist against either partner. Cohen v. Gamble, 71 Miss. 478, 15 So. 236, 1893 Miss. LEXIS 103 (Miss. 1893).

3. —Pleadings.

This provision does not enable one to declare upon a joint obligation and recover upon a several one. United States v. Ewing, 19 F.2d 378, 1927 U.S. Dist. LEXIS 1146 (D. Miss. 1927); Kimbrough v. Ragsdale, 69 Miss. 674, 13 So. 830, 1892 Miss. LEXIS 40 (Miss. 1892).

4. —Necessary and proper parties.

In a proceeding in chancery court to enforce a bond for child support against one surety thereon, a co-surety was not a necessary party. Box v. McKnight, 215 So. 2d 409, 1968 Miss. LEXIS 1349 (Miss. 1968).

Municipal street paving contractor was not a necessary party to suit on his surety bonds for amount due complainant for cement supplied to contractor. Marquette Cement Mfg. Co. v. Fidelity & Deposit Co., 173 Miss. 164, 158 So. 924, 1935 Miss. LEXIS 191 (Miss. 1935).

In action on partnership notes, one partner was not an indispensable party either to rendition of personal judgment against codefendants or to order directing sale of collateral, since defendants' obligation was joint and several, and judgment against some of them would not affect plaintiff's right as to others unless satisfaction was obtained. Enochs-Flowers, Ltd. v. Bank of Forest, 172 Miss. 36, 157 So. 711, 159 So. 407, 1934 Miss. LEXIS 385 (Miss. 1934).

Where county and town jointly made contract for grading street, landowner could sue contractor and town for damages for change of grade without joining county. J. B. White's Garage, Inc. v. Boyd, 149 Miss. 383, 115 So. 334, 1928 Miss. LEXIS 22 (Miss. 1928).

In an action on administrator's bond for misappropriation of funds after final decree plaintiff need not make the administrator a party defendant. Davis v. State, 118 Miss. 577, 79 So. 764, 1918 Miss. LEXIS 98 (Miss. 1918).

5. —Discontinuance as to some but not all.

Where the jury found in an action against joint debtors that the attachment on a truck was rightfully sued out but that a garnishment against the bank account of one of the defendants was wrongfully sued out, the dismissal of the garnishment did not release the sureties from liability on their bond to produce the truck, inasmuch as the defendant against whom the garnishment was dismissed was not discharged as a party to the action as to the attachment issue but only as to the debt issue in which the sureties had no interest. Davis v. Shemper, 210 Miss. 201, 50 So. 2d 143, 1951 Miss. LEXIS 267 (Miss. 1951).

Guarantors jointly executing guaranty held primarily and equally liable to guarantee who, having sued all guarantors, could properly discontinue action against one without thereby involving res judicata doctrine. Enochs & Flowers, Ltd. v. Roell, 170 Miss. 44, 154 So. 299, 1934 Miss. LEXIS 111 (Miss. 1934).

Under the provisions of this statute as formerly enacted that "every joint bond, covenant, bill, or promissory note" shall be deemed and construed to have the same effect in law as a joint and several bond, covenant, bill, or promissory note, and that it shall be lawful to sue out process and proceed to judgment against any one of the obligors, covenantors or drawers of such bond, covenant, bill, or promissory note, in the same manner as if the same were joint and several," the same license which gave to a party the power of instituting a suit against one or more of the parties to an undertaking carries with it by necessary implication the right to prosecute or discontinue it in the same sense and to the same extent and degree. Coffee v. Planters Bank of Tennessee, 54 U.S. 183, 14 L. Ed. 105, 1851 U.S. LEXIS 846 (U.S. 1851).

6. —Proof.

Where defendant sued as a partner denies the existence of the partnership under oath, it becomes necessary that plaintiff prove such partnership. Wise v. Cobb, 135 Miss. 673, 100 So. 189, 1924 Miss. LEXIS 58 (Miss. 1924).

7. —Judgment.

The obligations of partners are joint and several and a judgment may be rendered against one partner where the suit is against both, and a judgment against all partners where the evidence authorizes judgment against only one will be reversed in part and affirmed in part. Wise v. Cobb, 135 Miss. 673, 100 So. 189, 1924 Miss. LEXIS 58 (Miss. 1924).

Under this section [Code 1942, § 335] suit may be brought against one or more persons jointly and severally liable; partners are thus liable and an error in rendering judgment against several partners, two of whom were not served and did not appear, will not require reversal of the judgment as to the partner who was served, for the reason that one appealing party is not entitled to a reversal for an error as to another. Hattiesburg Hardware Co. v. Pittsburg Steel Co., 115 Miss. 663, 76 So. 570, 1917 Miss. LEXIS 247 (Miss. 1917).

A judgment against one partner unsatisfied is not a bar to an action against another partner. Hyman, Lichenstein & Co. v. Max Stadler & Co., 63 Miss. 362, 1885 Miss. LEXIS 81 (Miss. 1885); Scharff v. Noble, 67 Miss. 143, 6 So. 843, 1889 Miss. LEXIS 32 (Miss. 1889).

8. Settlements.

Under Mississippi law, nonsettling defendant, which was found 50% liable for patient's death in medical malpractice action, was responsible for $100,000 of $200,000 verdict and was not entitled to credit for $650,000 settlement which plaintiff had reached during trial with another defendant; crediting nonsettling defendant with settlement would undermine intention of jury to hold nonsettling defendant accountable and would violate public policy. Krieser v. Baptist Mem. Hospital-North Miss., 984 F. Supp. 463, 1997 U.S. Dist. LEXIS 20585 (N.D. Miss. 1997).

RESEARCH REFERENCES

Am. Jur.

47 Am. Jur. 2d, Judgments §§ 495 et seq.

59 Am. Jur. 2d, Parties §§ 153 et seq.

15 Am. Jur. Pl & Pr Forms (Rev) Judgments, Forms 301, 302 (judgments against joint debtors and joint and several debtors).

CJS.

49 C.J.S., Judgments §§ 30 et seq.

50 C.J.S., Judgments §§ 758, 759.

§ 85-5-5. Repealed.

Repealed by Laws, 1989, ch. 311, § 6, eff from and after July 1, 1989.

§ 85-5-5. [Codes, 1942, § 335.5; Laws, 1952, ch. 259]

Editor's Notes — Former § 85-5-5 related to contribution between joint tort feasors. For comparable provisions, see § 85-5-7.

§ 85-5-7. Limitation of joint and several liability for damages caused by two or more persons; contribution between joint tortfeasors; determination of percentage of fault; liability of medical defendants for economic and noneconomic damages.

(1) As used in this section, "fault" means an act or omission of a person which is a proximate cause of injury or death to another person or persons, damages to property, tangible or intangible, or economic injury, including, but not limited to, negligence, malpractice, strict liability, absolute liability or failure to warn. Except as otherwise provided in this subsection (1), "fault" shall not include any tort which results from an act or omission committed with a specific wrongful intent. For any premises-liability action, as defined under Section 11-1-66.1(7), alleging injury as a result of the willful, wanton or intentional tortious conduct of a third party on commercial or other real

property in the State of Mississippi, "fault" shall include any tort which results from an act or omission committed with a specific wrongful intent.

(2) Except as otherwise provided in subsection (4) of this section, in any civil action based on fault, the liability for damages caused by two (2) or more persons shall be several only, and not joint and several and a joint tortfeasor shall be liable only for the amount of damages allocated to him in direct proportion to his percentage of fault. In assessing percentages of fault an employer and the employer's employee or a principal and the principal's agent shall be considered as one (1) defendant when the liability of such employer or principal has been caused by the wrongful or negligent act or omission of the employee or agent.

(3) Nothing in this section shall eliminate or diminish any defenses or immunities which currently exist, except as expressly noted herein.

(4) Joint and several liability shall be imposed on all who consciously and deliberately pursue a common plan or design to commit a tortious act, or actively take part in it. Any person held jointly and severally liable under this section shall have a right of contribution from his fellow defendants acting in concert.

(5) In actions involving joint tortfeasors, the trier of fact shall determine the percentage of fault for each party alleged to be at fault without regard to whether the joint tortfeasor is immune from damages. Fault allocated under this subsection to an immune tortfeasor or a tortfeasor whose liability is limited by law shall not be reallocated to any other tortfeasor.

(6) Nothing in this section shall be construed to create a cause of action. Nothing in this section shall be construed, in any way, to alter the immunity of any person.

HISTORY: Laws, 1989, ch. 311, § 1; Laws, 2002, 3rd Ex Sess, ch. 2, § 4; Laws, 2002, 3rd Ex Sess, ch. 4, § 3; Laws, 2004, 1st Ex Sess, ch. 1, § 6, eff from and after September 1, 2004, and applicable to all causes of action filed on or after September 1, 2004; Laws, 2019, ch. 435, § 2, eff from and after July 1, 2019.

Editor's Notes — Section 7 of ch. 311, Laws of 1989, effective from and after July 1, 1989, provides as follows:

"SECTION 7. The provisions of this act shall apply only to causes of action accruing on or after July 1, 1989."

Laws of 2004, 1st ex. sess., ch. 1, § 20, provides:

"SECTION 20. Sections 8 through 15 of this act shall take effect and be in force from and after January 1, 2007; the remainder of this act shall take effect and be in force from and after September 1, 2004, and Sections 1 through 7 of this act shall apply to all causes of action filed on or after September 1, 2004.

JUDICIAL DECISIONS

ANALYSIS

I. Under § 85-5-7.

1. In general.
2. Applicaton.
3. Burden of proof.
4. Instructions to jury.
5. Verdict forms.
6. Parties.
7. Joint and several damages.

8. Miscellaneous.
9-10. [Reserved for future use.]

II. Under former § 85-5-5.

11. In general.
12. Right to indemnification.
13. Miscellaneous.

I. Under § 85-5-7.

1. In general.

Trial court did not abuse its discretion in excluding any testimony or evidence that other doctors were dismissed from a medical malpractice lawsuit against a doctor because the jury was still allowed to consider any negligence of the other doctors in rendering its decision. Kronfol v. Johnson, 283 So. 3d 1162, 2019 Miss. App. LEXIS 183 (Miss. Ct. App.), cert. denied, — So. 3d —, 2019 Miss. LEXIS 459 (Miss. 2019), cert. denied, 283 So. 3d 733, 2019 Miss. LEXIS 430 (Miss. 2019).

Trial court's finding that the city was 100 % liable for driver's injuries, caused when the driver was involved in a motor vehicle accident with a police car during a pursuit, was supported by sufficient evidence, including testimony that the police car did not have its lights or sirens on when entering the intersection. City of Jackson v. Spann, 4 So. 3d 1029, 2009 Miss. LEXIS 5 (Miss. 2009).

Under Miss. Code Ann § 85-5-7(3), a county was only liable for the portion of fault assigned to it with regard to the damages awarded to a passenger mother as the other portion of fault was assigned to a car driver. Callahan v. Ledbetter, 992 So. 2d 1220, 2008 Miss. App. LEXIS 547 (Miss. Ct. App. 2008).

Mississippi law does not require apportionment of fault, Miss. Code. Ann. § 85-5-7(1), (7), to a plaintiff absent evidence sufficient to show, at least, negligence on the plaintiff's part, Miss. Code. Ann. § 11-7-15. Travelers Cas. & Sur. Co. of Am. v. Ernst & Young LLP, 542 F.3d 475, 2008 U.S. App. LEXIS 19168 (5th Cir. Miss. 2008).

In a case in which an insurer and a company sought contribution from a fire department for workers' compensation benefits paid to a career fireman, the fire department's Fed. R. Civ. P. 12 motion to dismiss was granted because the insurer and the company asserted a cause of action for contribution for workers' compensation benefits which had long been recognized as not existing under Mississippi law absent a joint judgment among the parties. Travelers Prop. & Cas. Co. v. City of Greenwood Fire Dep't, 441 F. Supp. 2d 776, 2006 U.S. Dist. LEXIS 53914 (N.D. Miss. 2006).

Trial court improperly apportioned liability in a case in which a lessor sought to recover for damages to his building in a construction accident, finding the lessee 50 percent at fault, a general contractor 30 percent at fault, and a sub-contractor 20 percent at fault under Miss. Code Ann. § 85-5-7; the trial court improperly found that the lessee negligently performed its duties as architect because the construction contract was silent as to the duties of an architect and, absent a delineation of such duties, no duty to warn could be imputed to the lessee. Family Dollar Stores of Miss., Inc. v. Montgomery, 946 So. 2d 426, 2006 Miss. App. LEXIS 929 (Miss. Ct. App. 2006).

Where a car collision was caused when the driver of a commercial vehicle swerved to avoid hitting an unknown driver, the issue submitted to the jury was whether the commercial driver and his employer were negligent in the operation of the vehicle; because the jury rendered a verdict that defendants were not liable, the jury was not required to answer questions on the verdict form pertaining to the allocation of fault. White v. Stewman, 932 So. 2d 27, 2006 Miss. LEXIS 315 (Miss. 2006).

Where a mother filed suit against a school district and a bus driver to recover damages after the mother's child was hit by a school bus, Miss. Code Ann. § 85-5-7(7) did not apply because the case did not involve joint tortfeasors; hence, the trial court did not err in failing to allocate fault to the mother because the mother had dropped the child off for school across the street from the school. Jackson Pub. Sch. Dist. v. Smith, 875 So. 2d 1100, 2004 Miss. App. LEXIS 598 (Miss. Ct. App. 2004).

In a wrongful death case, a trial court erred in awarding a new trial on the issue of damages because it should not have reallocated fault from an immune employer to an electric company. Entergy Miss., Inc. v. Hayes, 874 So. 2d 952, 2004 Miss. LEXIS 412 (Miss. 2004).

Pursuant to the Mississippi Supreme Court, Miss. Code Ann. § 85-5-7 provides for contribution only in cases where a joint judgment is obtained among the parties. Travelers Prop. & Cas. Co. v. City of Greenwood Fire Dep't, 441 F. Supp. 2d 776, 2006 U.S. Dist. LEXIS 53914 (N.D. Miss. 2006).

Trial court properly applied a credit against judgment for amount received in settlement from entities not party to the litigation because the case involved multiple defendants, all alleged to have acted purposely and in concert to injure a customer by depriving him of the rightful possession of his vehicle and forcing him into a situation where he felt compelled to purchase a replacement vehicle on terms he could not afford. Brown v. N. Jackson Nissan, Inc., 856 So. 2d 692, 2003 Miss. App. LEXIS 891 (Miss. Ct. App. 2003).

Though the Mississippi Department of Transportation was not immune from suit, as the trial court properly found that a five to six inch drop-off on the shoulder of a road was a dangerous condition that was not obvious, which was created by the negligence of the Department and of which the Department knew but failed to warn against, the trial court erred by not assessing some degree of fault to plaintiff driver, who had been obliged to exercise vigilant caution when she learned the road was under construction. Miss. DOT v. Trosclair, 851 So. 2d 408, 2003 Miss. App. LEXIS 666 (Miss. Ct. App. 2003).

Allocation of fault to immune employers is consistent with Miss. Code Ann. § 85-5-7 and is required, provided that they are not held liable for damages. Mack Trucks, Inc. v. Tackett, 841 So. 2d 1107, 2003 Miss. LEXIS 135 (Miss. 2003).

To the extent that Accu-Fab & Construction, Inc. v. Ladner, 778 So. 2d 766 (Miss. 2001), may be construed as stating that immune parties may not be assessed fault (as opposed to liability) under Miss. Code Ann. § 85-5-7, that opinion is overruled. Mack Trucks, Inc. v. Tackett, 841 So. 2d 1107, 2003 Miss. LEXIS 135 (Miss. 2003).

In a wrongful death action, the trial court erred by allocating the defendants' liability for the fault attributed to an immune employer as well as their joint and several liability to reach the 50 percent goal proportionately in accordance with the jury allocation of fault to them respectively. Mack Trucks, Inc. v. Tackett, 841 So. 2d 1107, 2003 Miss. LEXIS 135 (Miss. 2003).

The trial court erred in applying Miss. Code Ann. § 85-5-7(2)-(3) (1999) as the statute abolished joint and several liability when a defendant was more than 50 percent liable, and the driver and the manufacturer were found to be 54 percent liable. Classic Coach, Inc. v. Johnson, 823 So. 2d 517, 2002 Miss. LEXIS 243 (Miss. 2002).

Trial court erroneously instructed the jury to allocate fault to a statutory employer, and the settlement reached in a wrongful death/product liability case should not have been credited before the proportionate damage amounts were calculated respecting the non-settling defendants. Yale Materials Handling Corp. v. Brandon, 2002 Miss. LEXIS 180 (Miss. May 23, 2002), op. withdrawn, 2003 Miss. LEXIS 21 (Miss. Jan. 16, 2003).

Because an employer and an employee were to be considered one defendant when the liability was caused by the employee, as provided by Miss. Code Ann. § 85-5-7(3), it was not reversible error for a jury instruction not to allow the jury to apportion fault between those parties pursuant to Miss. Code Ann. § 85-5-7(7); in any event, two jury instructions taken together gave the jury an opportunity to find for those parties if it was so inclined. Coho Res., Inc. v. McCarthy, 829 So. 2d 1, 2002 Miss. LEXIS 208 (Miss. 2002).

The statute's apportionment provision only applies to damages incurred due to negligence; the statute does not apply to a breach of contract. Cooper Indus. v. Tarmac Roofing Sys., 276 F.3d 704, 2002 U.S. App. LEXIS 173 (5th Cir. Miss. 2002).

The collective joint and several liability of all defendants contributing to a loss is 50 percent; in other words, the statute does not authorize a prevailing plaintiff to recover 50 percent of his award from each defendant. Narkeeta Timber Co. v. Jenkins, 777 So. 2d 39, 2000 Miss. LEXIS 235 (Miss. 2000).

Any tortfeasor, even absent ones, that contributed to the injury at issue must be considered by the jury when apportioning fault. Peterson v. Ladner, 785 So. 2d 290, 2000 Miss. App. LEXIS 531 (Miss. Ct. App. 2000).

Responsibility may not be allocated between intentional and negligent participants in the events that caused injury; the statute does not contemplate that a willful contribution to an injury be allocated just as is negligence. Dawson v. Townsend & Sons, Inc., 735 So. 2d 1131, 1999 Miss. App. LEXIS 315 (Miss. Ct. App. 1999).

Participants in an event who for some reason are not joined in the litigation, so-called "phantom defendants," can nonetheless have their portion of fault assigned to them; a jury may not be instructed to consider only the parties actually sued, else the defendants who are present have been unfairly denied the benefits of the system of comparative fault. Dawson v. Townsend & Sons, Inc., 735 So. 2d 1131, 1999 Miss. App. LEXIS 315 (Miss. Ct. App. 1999).

In an action alleging conversion and violations of state securities laws, the trial court did not deny the defendants of their right to allocate liability pursuant to this section when it refused to allow the defendant to proceed simultaneously with its claims against others and failed to allow joinder of an individual. First Investors Corp. v. Rayner, 738 So. 2d 228, 1999 Miss. LEXIS 172 (Miss. 1999).

The term "party," as used in subsection (7) of this section, refers to any participant to an occurrence that gives rise to a lawsuit, and not merely the parties to a particular lawsuit or trial. Estate of Hunter v. GMC, 729 So. 2d 1264, 1999 Miss. LEXIS 18 (Miss. 1999).

Where fault has been apportioned between settling and non-settling defendants, then, notwithstanding the settlement, the non-settling defendant remains liable for the amount of damages allocated to him in direct proportion to his percentage of fault. Krieser v. Hobbs, 166 F.3d 736, 1999 U.S. App. LEXIS 1642 (5th Cir. Miss. 1999).

The term "fault," as used in subsection (1), does not include intentional torts; thus, in an action against a store for injuries sustained in a crime which was allegedly caused by its failure to provide adequate security in its parking lot, the store's percentage of fault was 100 percent since the persons who committed the crime had no "fault." Whitehead v. Food Max, Inc., 163 F.3d 265, 1998 U.S. App. LEXIS 31380 (5th Cir. Miss. 1998).

Department of Transportation had sovereign immunity on claim for indemnification by ambulance service that was sued for injuries sustained by motorist when oncoming ambulance struck her car at intersection, allegedly after department's flagman flagged her to proceed with left turn. Mississippi Transp. Comm'n v. Jenkins, 699 So. 2d 597, 1997 Miss. LEXIS 421 (Miss. 1997).

Sovereign immunity applies to actions where state is possible joint tort-feasor. Mississippi Transp. Comm'n v. Jenkins, 699 So. 2d 597, 1997 Miss. LEXIS 421 (Miss. 1997).

It was not necessary to join Mississippi city as "phantom party" defendant in suit by city employee alleging injury as result of corporation's release of certain substances into city sewer system, so that jury could fully apportion fault under § 85-5-7 even though plaintiff could not sue city directly and corporation could not seek contribution from city, as result of mandate of § 71-3-9. Statute did not contain clear command that alleged joint-tortfeasors be joined in such a way. White v. Esmark Apparel, 788 F. Supp. 907, 1992 U.S. Dist. LEXIS 5771 (N.D. Miss. 1992).

Employer who is immune to tort action by employee under workers' compensation law is not rendered amenable to such suit by § 85-5-7 which requires apportionment of liability among joint tortfeasors; subsection (8) specifically precludes this section from creating new cause of action. Stringfellow v. Reed, 739 F. Supp. 324, 1990 U.S. Dist. LEXIS 8239 (S.D. Miss. 1990).

2. Applicaton.

Trial court properly applied this section and Miss. Code Ann. § 11-1-60(2)(b) to the damages award, finding that the sandblasting company was liable for the damages apportioned to it, which were below the $1 million cap. Miss. Valley Silica Co.

v. Barnett, 227 So. 3d 1102, 2016 Miss. App. LEXIS 548 (Miss. Ct. App. 2016), cert. dismissed, 2017 Miss. LEXIS 401 (Miss. Sept. 28, 2017).

3. Burden of proof.

Supreme Court agreed that a physician in a medical malpractice suit raised an affirmative defense regarding the apportionment of damages, but failed to present sufficient evidence to create a genuine issue of material fact that would have attributed negligence to a third party. A partial summary judgment for the wife, who was the decedent's survivor, was proper. Eckman v. Moore, 876 So. 2d 975, 2004 Miss. LEXIS 287 (Miss. 2004).

In a wrongful death case, a court properly granted partial summary judgment to plaintiff on the issue of apportionment where the doctor's rebuttal evidence did not indicate any fault attributable to a third party. Eckman v. Moore, 2003 Miss. LEXIS 552 (Miss. Oct. 23, 2003), op. withdrawn, 2004 Miss. LEXIS 310 (Miss. Mar. 25, 2004), sub. op., 876 So. 2d 975, 2004 Miss. LEXIS 287 (Miss. 2004).

4. Instructions to jury.

Circuit court did not err, pursuant to Miss. Code Ann. §§ 85-5-7(5) and 63-3-805, in refusing an apportionment-of-fault jury instruction because the uncontested evidence presented at trial demonstrated that it was one motorist's negligence that was the sole proximate cause of the accident at an intersection and the injuries sustained by the other motorist and the other motorist's spouse. Dunnam v. Abney, 137 So. 3d 876, 2013 Miss. App. LEXIS 770 (Miss. Ct. App. 2013), cert. denied, 139 So. 3d 74, 2014 Miss. LEXIS 242 (Miss. 2014).

Finding in favor of a psychiatrist in a negligence action after the decedent killed herself was proper, in part because, although the representative argued that the trial court should have given the jury an apportionment instruction pursuant to Miss. Code Ann. § 85-5-7, she had previously stated in a discovery response that no heir had exacerbated the decedent's mental illness. In arguing for an apportionment instruction, the representative provided no other theory as to how an heir could have been held partially responsible for the suicide and the representative's discovery response was binding on her. Young v. Guild, 7 So. 3d 251, 2009 Miss. LEXIS 193 (Miss. 2009).

In a personal injury products liability lawsuit, when the jury instructions that were given were read as a whole, there was no error by the trial court regarding the form of the verdicts. Proper apportionment instructions were given to the jury, Miss. Code Ann. § 85-5-7(7) (now found at § 85-5-7(5)). Goodyear Tire & Rubber Co. v. Kirby, 156 So. 3d 281, 2009 Miss. App. LEXIS 221 (Miss. Ct. App. 2009), cert. dismissed, 36 So. 3d 455, 2010 Miss. LEXIS 327 (Miss. 2010).

In a suicide wrongful death case against a doctor, plaintiff waived her claim that the court should have given the jury an apportionment instruction due to the fact that the doctor put forth evidence that the decedent's husband and other family members caused the decedent to commit suicide because plaintiff stated in a discovery response that no heir had exacerbated the decedent's mental illness, and plaintiff provided no other theory as to how an heir could be held partially responsible for the suicide. Young v. Guild, 2008 Miss. LEXIS 548 (Miss. Oct. 30, 2008).

In a medical malpractice case stemming from the death of a patient who was misdiagnosed with cancer and who succumbed from an overdose of pain medication administered by hospice personnel in accordance with the instructions of defendant doctor, the trial court did not err in failing to instruct the jury on the allocation of fault because the doctor failed to establish that defendant medical center, a settling defendant, actually took part in the doctor's decision to switch the patient's medication or to establish the dosage. Causey v. Sanders, 998 So. 2d 393, 2008 Miss. LEXIS 520 (Miss. 2008).

In a negligence case, the trial court erred in not instructing the jury to apportion some fault to an employer, even though the employer was immune from liability under the workers' compensation law. Coho Res., Inc. v. Chapman, 913 So. 2d 899, 2005 Miss. LEXIS 266 (Miss. 2005).

Where a car collision was caused when the driver of a commercial vehicle swerved to avoid hitting an unknown driver, the jury was directed to allocate fault between the drivers under Miss. Code Ann. § 85-5-7; the jury's verdict for the commercial driver was supported by substantial evidence, because reasonable minds could have differed as to liability. White v. Stewman, 932 So. 2d 27, 2006 Miss. LEXIS 315 (Miss. 2006).

Jury was obligated to determine a minor driver's percentage of fault, who had reached a settlement, irrespective of his status as a party at the time of trial; jury was entitled to know that, up until the settlement, plaintiffs and defendants were claiming that the minor driver was at fault for the accident and brought suit against him seeking a recovery for the same. Smith v. Payne, 839 So. 2d 482, 2002 Miss. LEXIS 13 (Miss. 2002).

It was reversible error for the trial court to instruct the jury in such a manner so as to refuse to allow it to consider the negligence of a settling defendant in apportioning fault for injuries sustained by the plaintiff in an accident between an animal drawn wagon and a motor vehicle. Peterson v. Ladner, 2000 Miss. App. LEXIS 303 (Miss. Ct. App. June 27, 2000), sub. op., 785 So. 2d 290, 2000 Miss. App. LEXIS 531 (Miss. Ct. App. 2000).

The instruction offered by the plaintiffs for determining whether the defendant's negligence in any way caused the plaintiff's injuries satisfied this section since the instruction merely stated that the jury should find that the plaintiff was entitled to recover from the defendant if it found that the defendant's negligence in any way caused her injuries. Fielder v. Magnolia Bev. Co., 757 So. 2d 925, 1999 Miss. LEXIS 165 (Miss. 1999).

5. Verdict forms.

Trial court's failure to use verdict forms proposed by a law firm, which would have permitted an allocation of fault to each party under the comparative fault law, was reversible error in the contractor's action, alleging legal malpractice and related claims, as the evidence would have permitted an allocation of fault to the various parties. Baker & McKenzie, LLP v. Evans, 123 So. 3d 387, 2013 Miss. LEXIS 548 (Miss. 2013).

6. Parties.

Plaintiff was not at fault, Miss. Code. Ann. § 85-5-7(1), (7), because it "assumed the risk" associated with bonding a project by making a decision to proceed with a "high risk surety" situation; plaintiff could not have fully appreciated or voluntarily assumed the complete risk of its decision to bond a project; therefore, plaintiff could not have its recovery reduced based on assumption of risk theory. Travelers Cas. & Sur. Co. of Am. v. Ernst & Young LLP, 542 F.3d 475, 2008 U.S. App. LEXIS 19168 (5th Cir. Miss. 2008).

Wrongful death action against medical defendants and a casino should not have been severed because such severance violated the requirement in Miss. Code Ann. § 11-7-13 of "one suit for the same death," and was also inconsistent with Miss. Code Ann. § 85-5-7. Adams v. Baptist Mem'l Hospital-Desoto, Inc., 965 So. 2d 652, 2007 Miss. LEXIS 472 (Miss. 2007).

Under Mississippi's center of gravity analysis as to how the conduct of receivers of defunct insurance companies affected a corporation's liability, N.Y. C.P.L.R. § 1601 was applicable rather than Miss. Code Ann. § 85-5-7; thus, the corporation was not entitled to apportionment of fault for negligence-based claims brought by the receivers because the injury occurred primarily in New York as the corporation's headquarters and Mississippi had little or no interest in protecting the nonresident corporation. Dale v. ALA Acquisitions I, Inc., 434 F. Supp. 2d 423, 2006 U.S. Dist. LEXIS 37915 (S.D. Miss. 2006).

Because an employer and an employee were to be considered one defendant when the liability was caused by the employee, as provided by Miss. Code Ann. § 85-5-7(3), it was not reversible error for a jury instruction not to allow the jury to apportion fault between those parties pursuant to Miss. Code Ann. § 85-5-7(7); in any event, two jury instructions taken together gave the jury an opportunity to find for those parties if it was so inclined. Coho Res., Inc. v. McCarthy, 829 So. 2d 1, 2002 Miss. LEXIS 208 (Miss. 2002).

In the absence of a contractual relationship between a mortgage borrower's insurer and a mortgage lender's insurer, Miss. Code Ann. § 85-5-7 barred the borrower's insurer from seeking contribution from the lender's insurer of pro rata amounts paid by the borrower's insurer for fire damage to the borrower's property. Hill v. General Ins. Co. of Am., 456 F. Supp. 2d 757, 2006 U.S. Dist. LEXIS 59179 (N.D. Miss. 2006).

Trial court did not abuse its discretion in severing an employee prior to a wrongful death trial; even had the employee not been severed, the employee would not have had any separate liability apart from the employer because an employee was considered one with the employer pursuant to Miss. Code Ann. § 85-5-7(3), which prevented the apportionment of damages between them. Coho Res., Inc. v. McCarthy, 829 So. 2d 1, 2002 Miss. LEXIS 208 (Miss. 2002).

Fault may not be allocated to employers who are immune from liability by virtue of the workers' compensation law. Mack Trucks, Inc. v. Tackett, 2001 Miss. LEXIS 40 (Miss. Feb. 22, 2001).

In an action against a general contractor and a subcontractor arising from the death of an iron worker while constructing a casino on a barge on a navigable waterway, the defendants were not entitled to have another subcontractor that employed the decedent considered as a party for apportionment of damages since the decedent's employer was in the unique position of having no fault pursuant to the federal Longshore and Harbor Workers' Compensation Act. Accu-Fab & Constr., Inc. v. Ladner by & Through Ladner, 970 So. 2d 1276, 2000 Miss. App. LEXIS 111 (Miss. Ct. App. 2000), aff'd, 778 So. 2d 766, 2001 Miss. LEXIS 38 (Miss. 2001).

7. Joint and several damages.

Under Mississippi's Dram Shop Act, Miss. Code Ann. § 67-3-73(4) (2005), which required proof that a customer was served alcohol when he was visibly intoxicated, a casino was liable for damages from the customer's car accident as the expert of the wrongful-death heirs testified that the driver's blood alcohol content was high enough that trained personnel should have spotted the driver's intoxication. However, under Miss. Code Ann. § 85-5-7(3), which was in effect when the suit was filed, joint and several liability was limited to fifty percent of recoverable damages. Robinson Prop. Group, Ltd. P'ship v. McCalman, 51 So. 3d 946, 2011 Miss. LEXIS 19 (Miss. 2011).

In light of Fontenot and Miss. Code Ann. § 85-5-7(5), Mississippi law supports allocation of fault to immune parties, such as an employer in a non-vessel the Longshore and Harbor Workers' Compensation Act, 33 U.S.C.S. § 901 et seq., claim. Jowers v. Lincoln Elec. Co., 617 F.3d 346, 2010 U.S. App. LEXIS 17862 (5th Cir. Miss. 2010).

Tire manufacturer's claims against a dealer and guarantors for fraud, negligent misrepresentation, and breach of contract were dismissed rather than stayed under 9 U.S.C.S. § 3 pending arbitration or mediation because the fraud claims allegedly arose from or were directly related to the parties relationship and within the scope of an arbitration agreement and allegations against the guarantors were based on joint and several liability under Miss. Code Ann. § 85-5-7(4) and their unconditional guarantees. Bridgestone Firestone N. Am. Tire, LLC. v. J&J Tire Co., LLC., 602 F. Supp. 2d 770, 2009 U.S. Dist. LEXIS 8594 (S.D. Miss. 2009).

Court erred by failing to address the apportionment of fault between joint tortfeasors in a suit by plaintiffs against the city for injuries sustained during a police chase because it was unclear whether the court assessed plaintiffs' total damages in an amount greater than the judgment, and accordingly reduced the award by a percentage of fault assessed to the chase suspect, or if it determined the total damages suffered by plaintiffs and assessed no percentage of fault to the suspect. City of Ellisville v. Richardson, 913 So. 2d 973, 2005 Miss. LEXIS 275 (Miss. 2005).

Where defendant hospital was dismissed from a medical negligence suit on the basis of the statute of limitations, the jury was permitted to consider the hospital's negligence in rendering its decision regarding the fault of the remaining defendants. The trial court did not err in denying plaintiffs' motion for directed verdict regarding the allocation of fault. Blailock v. Hubbs, 919 So. 2d 126, 2005 Miss. LEXIS 360 (Miss. 2005).

Even though an employer of a decedent was immune from suit, it was proper to allocate a portion of the fault to the employer in an action against an electric company for wrongful death by electrocution from the company's power lines. Ware v. Entergy Miss., Inc., 887 So. 2d 763, 2003 Miss. LEXIS 876 (Miss. 2003).

Statute saved for the injured plaintiff joint and several collection rights to the extent of allowing recovery of fifty percent of the damages; it preserved immunities and defenses and left for interpretation the question of which if any nonparties could be considered for allocation of fault. Mack Trucks, Inc. v. Tackett, 2001 Miss. LEXIS 285 (Miss. Oct. 25, 2001).

In an action arising from a motor vehicle accident in which the trial court found that the plaintiff, the defendant, and two persons not party to the suit were each responsible for 25 percent of the plaintiff's damages, the court incorrectly ordered the defendant to pay 25 percent of the total damages; the statute required that the defendant pay 50 percent of the the plaintiff's recoverable damages, that is, 50 percent of 75 percent of the total damages, or 37.5 percent of the total damages. DePriest v. Barber, 798 So. 2d 456, 2001 Miss. LEXIS 75 (Miss. 2001).

8. Miscellaneous.

Hospital was not entitled to partial summary judgment on vicarious liability claims brought by a decedent's parent because the claims were not extinguished when a doctor employed by the hospital was dismissed from the medical malpractice action due to the failure to successfully serve pre-suit notice on the doctor and the dismissal of the doctor was with prejudice as the statute of limitations had expired. Furthermore, the doctor was not an indispensable party to the vicarious liability claims against the hospital. Methodist Healthcare-Olive Branch Hosp. v. McNutt, — So. 3d —, 2021 Miss. LEXIS 203 (Miss. Aug. 6, 2021).

If the jury had found fault with the truck driver, the jury would have been legally required to apportion fault pursuant to the statute, and the fact that the ambulance driver had methamphetamine in his system was certainly a factor the jury could have considered in apportioning fault. Rushing v. Mobile Forest Prods., 282 So. 3d 708, 2019 Miss. App. LEXIS 370 (Miss. Ct. App. 2019).

Trial court erred in granting private contractors summary judgment on the basis that a widow's wrongful death claim would require it to question military decisions because they failed to show that adjudication of a ballistic wall's failure would implicate a political question; the contractors did not show that they would put forward a viable contributory negligence defense because the claim that the wall failed could stand without implicating a decision committed to the military's discretion. Ghane v. Mid-South Inst. of Self Def. Shooting, Inc., 137 So. 3d 212, 2014 Miss. LEXIS 32 (Miss.), cert. denied, 574 U.S. 821, 135 S. Ct. 108, 190 L. Ed. 2d 41, 2014 U.S. LEXIS 5713 (U.S. 2014).

Chancellor erred by imposing joint and several liability on a city, lake owners, and a homeowners association for damages to a homewowner's property caused by the failure of a culvert system, as she did not find that they had colluded to commit a tortious act. Borne v. Estate of T. L. Carraway, 118 So. 3d 571, 2013 Miss. LEXIS 373 (Miss. 2013).

Where plaintiffs sued defendants for the wrongful removal of timber from a tract of land they alleged defendants held in trust for plaintiffs' benefit, the chancellor erred by failing to consider the percentage of fault of the settling defendants or nonparties, as required by Miss. Code Ann. § 85-5-7(5). Smiley v. Yllander, 105 So. 3d 1171, 2012 Miss. App. LEXIS 807 (Miss. Ct. App. 2012).

Grant of summary judgment in favor of the other driver in the passenger's negligence action for injuries that she received in a car accident was inappropriate because an oral surgeon's testimony was admissible; he testified that his opinion was based on his knowledge, skill, experience, training, and education as an orthopedic surgeon and his testimony was sufficient to establish the element of proximate cause and was admissible for the jury to consider in the apportionment of damages. The other driver, as the driver of the second car to hit the vehicle in which the passenger was riding, was responsible only for the amount of the passenger's damages that were based on his fault allocated by the jury in accord with Miss. Code Ann. § 85-5-7. Lopez v. McClellan, 2010 Miss. App. LEXIS 214 (Miss. Ct. App. Apr. 27, 2010).

In a products liability action alleging three welding rod manufacturers' failure to warn, the fact that the professional welder was exposed or overexposed to fumes from welding consumables manufactured by two nonparty manufacturer's did not affect the legitimacy of the jury's verdict against the three named manufacturers, as there was no factual or legal requirement that, in order to recover at trial, the harm caused to the professional welder by his exposure to welding fumes be caused only, or even mostly, by the three manufacturers' products; although the three manufacturers argued to the jury that the presence of the nonparty manufacturers' welding products in the workplace was relevant to causation, they never asked the court to instruct the jury to allocate fault to the nonparty manufacturers. The three manufacturers certainly knew how to ask for such an allocation, as they cited Miss. Code Ann. § 85-5-7 and asked the court to allocate fault to the professional welder's employer; but whatever their reasons for not seeking allocation of fault against the nonparty manufacturers, there was sufficient evidence at trial that the products manufactured by each of the three manufacturers were a proximate cause of harm to the professional welder, and the fact that the nonparty manufacturers might have proximately caused those same indivisible injuries was not a valid basis for the three manufacturers' postverdict motion for judgment as a matter of law under Fed. R. Civ. P. 50(b). Jowers v. BOC Group, Inc., 608 F. Supp. 2d 724, 2009 U.S. Dist. LEXIS 28806 (S.D. Miss. 2009).

9-10. [Reserved for future use.]

II. Under former § 85-5-5.

11. In general.

This section was inapplicable to a wrongful death action in which defendant, as one of the alleged tortfeasors, was sued alone. Hood v. Dealers Transport Co., 472 F. Supp. 250, 1979 U.S. Dist. LEXIS 12939 (N.D. Miss. 1979).

In accordance with the policy established under this section, contribution between joint judgment debtors would be pro rata based upon the number of defendants rather than on the percentage of liability attributable to defendants. Celotex Corp. v. Campbell Roofing & Metal Works, Inc., 352 So. 2d 1316, 1977 Miss. LEXIS 1998 (Miss. 1977).

The first paragraph of this section [Code 1942, § 335.5] created a new Mississippi rule that joint tortfeasors are to share equally. Standard Oil Co. v. Illinois C. R. Co., 421 F.2d 201, 1969 U.S. App. LEXIS 9590 (5th Cir. Miss. 1969).

The effect of this statute is to create rights which did not exist before and destroyed a valid defense to an action for contribution which was available before the enactment of this statute. Klaas v. Continental Southern Lines, Inc., 225 Miss. 94, 82 So. 2d 705, 1955 Miss. LEXIS 563 (Miss. 1955).

The second paragraph of this section [Code 1942, § 335.5] tells how to count the joint tortfeasor defendants who are to share in the contribution. Standard Oil Co. v. Illinois C. R. Co., 421 F.2d 201, 1969 U.S. App. LEXIS 9590 (5th Cir. Miss. 1969).

The proviso in the second paragraph of this section [Code 1942, § 335.5] places a ceiling on the liability of a principal or employer so that he (or his insurer) is not exposed to the risk of contributing twice, once for his agent's wrong and once for his own responsibility imposed by respondeat superior. Standard Oil Co. v. Illinois C. R. Co., 421 F.2d 201, 1969 U.S. App. LEXIS 9590 (5th Cir. Miss. 1969).

In a situation where the proviso set forth in the second paragraph of this section [Code 1942, § 335.5] is inapplicable, the first paragraph of the section requires that the defendants against whom judgment is rendered shall share equally the obligation imposed by the judgment. Standard Oil Co. v. Illinois C. R. Co., 421 F.2d 201, 1969 U.S. App. LEXIS 9590 (5th Cir. Miss. 1969).

Where an agent was not the subject of a judgment entered against his principal, the principal runs no risk of paying twice, and the proviso in the second paragraph of this section [Code 1942, § 335.5] is inapplicable. Standard Oil Co. v. Illinois C. R. Co., 421 F.2d 201, 1969 U.S. App. LEXIS 9590 (5th Cir. Miss. 1969).

There is nothing in the statute to indicate that the legislature intended to make the new law apply to judgments rendered before its effective date. Klaas v. Continental Southern Lines, Inc., 225 Miss. 94, 82 So. 2d 705, 1955 Miss. LEXIS 563 (Miss. 1955).

The use of the word "is" in a clause providing that "any action for damages where judgment is rendered against two or more defendants jointly and severally," although it usually denotes present tense but by reason of the context the meaning of this word appears to have a future signification. Klaas v. Continental Southern Lines, Inc., 225 Miss. 94, 82 So. 2d 705, 1955 Miss. LEXIS 563 (Miss. 1955).

12. Right to indemnification.

One insurance company was entitled to contribution from another insurance company where both were liable for accruing interest and cost of litigation, and one would be unjustly enriched if other's payment were to relieve it of liability; because either insurance company could have been forced to pay entire cost, they had "common liability" for purposes of contribution. Nichols v. Anderson, 837 F.2d 1372, 1988 U.S. App. LEXIS 2365 (5th Cir. Miss. 1988).

An electric utility company was guilty of active negligence in failing to elevate a power line after it became aware that as a result of the land beneath the line being filled in, the line was dangerously lower than the height required in safety regulations, and the utility was not entitled to noncontractual implied indemnity from an employer, also actively negligent, for damages which the employer suffered as a result of settling with the heirs of an employee who was electrocuted while operating equipment which came in contact with the line. Home Ins. Co. v. Atlas Tank Mfg. Co., 230 So. 2d 549, 1970 Miss. LEXIS 1550 (Miss. 1970).

Although there is no right of contribution where the parties are joint tortfeasors or are in pari delicto, parties are not in pari delicto when one party does the act or creates a dangerous situation and the other party is liable because of passive negligence in failing to remedy the defect causing an injury, or because of a nondelegable statutory duty. Bush v. Laurel, 215 So. 2d 256, 1968 Miss. LEXIS 1348 (Miss. 1968).

A city, by law under a nondelegable duty to maintain its streets and sidewalks in a reasonably safe condition, cannot be considered in pari delicto with a contractor who, with the consent of the municipality, dug a ditch into which a pedestrian fell and was injured; and the city was entitled to indemnification from the contractor for all sums which it paid in settlement of the pedestrian's claim, including court costs and attorneys' fees. Bush v. Laurel, 215 So. 2d 256, 1968 Miss. LEXIS 1348 (Miss. 1968).

13. Miscellaneous.

Where two chemical companies failed to refute an expert's affidavit that contamination had not come from a toilet company or result from a migration of contaminates over its property, summary judgment was properly granted in favor of the toilet company, and the opportunity for allocation of fault was not unfairly prejudiced. Kerr-McGee Corp. v. Maranatha Faith Ctr., Inc., 873 So. 2d 103, 2004 Miss. LEXIS 500 (Miss. 2004).

Defendant in action by city employee for injuries sustained in car accident while employee was on duty cannot maintain third-party action against city for contribution under Miss Code Anno § 85-5-5, as employee may not recover in tort against his employer due to exclusivity provisions of § 71-3-9. McClellan v. Poole, 692 F. Supp. 687, 1988 U.S. Dist. LEXIS 9011 (S.D. Miss. 1988).

In an action by an insurer that had previously unsuccessfully defended its insured in a wrongful death action arising out of an automobile accident, alleging that the gas explosion responsible for the underlying death was caused by a design defect in decedent's car and seeking to recover a portion of the judgment entered against its insured from defendants, the manufacturer of decedent's car and the dealership that sold it to him, defendants' motion to dismiss would be sustained where contribution among joint tortfeasors was available only when judgment was rendered against them jointly and severally and where neither defendant had been a party to the original lawsuit. Hartford Acci. & Indem. Co. v. Mitchell Buick-Pontiac & Equipment Co., 479 F. Supp. 345, 1979 U.S. Dist. LEXIS 9268 (N.D. Miss. 1979).

The settlement by a railroad company with the estate of a petroleum tank truck driver killed in a crossing accident did not constitute a release on the part of the company of its rights against the driver's estate, thereby releasing the company's right of contribution under this section [Code 1942, § 335.5] against the driver's principals. Standard Oil Co. v. Illinois C. R. Co., 421 F.2d 201, 1969 U.S. App. LEXIS 9590 (5th Cir. Miss. 1969).

Where plaintiffs brought an action against city and a landowner, among others, for injury sustained when a tree fell upon their automobile, and the landowner entered his appearance but filed no defensive pleadings, an order of the trial court sustaining demurrer to an amended petition had the effect of finally dismissing plaintiff's entire suit upon the failure to plead further within the time allowed, and finally disposed of the case as to the landowner, and neither Code 1942, § 1156, nor Code 1942, § 335.5, precluded plaintiff's appeal from the trial court's action. Barron v. Natchez, 229 Miss. 276, 90 So. 2d 673, 1956 Miss. LEXIS 607 (Miss. 1956).

RESEARCH REFERENCES

ALR.

Voluntary payment into court of judgment against one joint tortfeasor as release of others. 40 A.L.R.3d 1181.

What statute of limitations applies to action for contribution against joint tortfeasor. 57 A.L.R.3d 927.

Validity and effect of agreement with one cotortfeasor setting aside his maximum liability and providing for reduction or extinguishment thereof relative to recovery against nonagreeing cotortfeasor. 65 A.L.R.3d 602.

Right of tortfeasor to contribution from joint tortfeasor who is spouse or otherwise in close familial relationship to injured party. 25 A.L.R.4th 1120.

Comparative fault: calculation of net recovery by applying percentage of plaintiff's fault before or after subtracting amount of settlement by less than all joint tortfeasors. 71 A.L.R.4th 1108.

Right of tortfeasor initially causing injury to recover indemnity or contribution from medical attendant aggravating injury or causing new injury in course of treatment. 72 A.L.R.4th 231.

Release of one joint tortfeasor as discharging liability of others under Uniform Contribution Among Tortfeasors Act and other statutes expressly governing effect of release. 6 A.L.R.5th 883.

Construction and Application of Longshore and Harbor Workers' Compensation Act (LHWCA) – Supreme Court Cases. 72 A.L.R. Fed. 2d 1.

Right to contribution in federal antitrust case. 47 A.L.R. Fed. 712.

Am. Jur.

18 Am. Jur. 2d, Contribution §§ 39 et seq.

Law Reviews.

Jackson, Legislative reform of statutes of limitations in Mississippi: proposed interpretations, possible problems. 9 Miss. College L. R. 231, Spring 1989.

Williams, 1989 tort "reform" in Mississippi: modification of joint and several liability and the adoption of comparative contribution. 13 Miss. C. L. Rev. 133, Fall, 1992.

McIntosh, Tort Reform in Mississippi: An Appraisal of the New Law of Products Liability, Part II, 17 Miss. C. L. Rev. 277, Spring, 1997.

Symposium on Mississippi Rules of Civil Procedure: Joinder of Claims and Parties-Rules 13, 14, 17 and 18. 52 Miss. L. J. 37, March 1982.

Twyner, A Survey and Analysis of Comparative Fault in Mississippi. 52 Miss. L.J. 563, September 1982.

Wade, Multiple Tortfeasor Liability in Products Liability Suits. 55 Miss. L. J. 683, December 1985.

Comment, Fair Apportionment of Fault Among Joint Tortfeasors-A Mississippi Perspective. 55 Miss. L. J. 709, December 1985.

Modified Joint and Several Liability in Mississippi: The Absent Settling Tortfeasor and the Immune Employer, 70 Miss. L.J. 821 (2000).

Checking Up On the Medical Malpractice Liability Insurance Crisis in Mississippi: Are Additional Tort Reforms the Cure?, 73 Miss. L.J. 1001 (2004).

Now Open for Business: The Transformation of Mississippi's Legal Climate, 24 Miss. C. L. Rev. 393, Spring, 2005.

Taming an Elephant: A Closer Look at Mass Tort Screening and the Impact of Mississippi Tort Reforms, 26 Miss. C. L. Rev. 253, 2006/2007.

CHAPTER 7.

LIENS

Article 1. Crops, Advances, Lumber, Timber, Foals, Calves and Water Craft. 85-7-1
Article 3. Sale of Timepiece, Jewelry, etc. For Repair Charges. 85-7-71
Article 5. Mechanics and Stablekeepers. 85-7-101
Article 7. Owner's Lien for Rent on Personal Property in Self-Storage Facility. 85-7-121
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Article 17. General Provisions. 85-7-261
Article 19. Qualifying Providers of Burn Care Lien for Causes of Action. 85-7-301
Article 21. Special Liens on Real Estate or Other Property. 85-7-401
Article 23. Commercial Real Estate Broker Lien Act. 85-7-501

ARTICLE 1.

CROPS, ADVANCES, LUMBER, TIMBER, FOALS, CALVES AND WATER CRAFT.

Liens on Crops, Advances, Lumber, Timber, Foals, Calves and Water Craft. 85-7-1
Suits to Enforce Liens on Crops, Advances, Lumber, Timber, Foals, Calves and Water Craft. 85-7-31

LIENS ON CROPS, ADVANCES, LUMBER, TIMBER, FOALS, CALVES AND WATER CRAFT

Sec.
85-7-1. Employer and employees; lien on crops.
85-7-3. Sawmill employees and timber men; lien on lumber and timber.
85-7-5. Owner of stallion, jackass, or bull; lien on foal or calf.
85-7-7. Water craft; work, materials, supplies, etc.
85-7-9. Water craft; municipal dockage, wharfage, or anchorage charges.

§ 85-7-1. Employer and employees; lien on crops.

(1) Every employer shall have a lien on the share or interest of his employee in any crop made under such employment, for all advances of money, and for the fair market value of other things advanced by him, or anyone at his request, for supplies for himself, his family and business during the existence of such employment, which lien the employer may offset, recoup, or otherwise assert and maintain.

(2) Every employee, laborer, cropper, part owner, overseer or manager, or other person who may aid by his labor to make, gather, or prepare for sale or

market any crop, shall have a lien on the interest of the person who contracts with him for such labor for his wages, share or interest in such crop, whatever may be the kind of wages or the nature of the interest, which lien such employee, laborer, cropper, part owner, overseer or manager, or other person may offset, recoup or otherwise assert and maintain.

(3) Except as provided in subsection (4) of this section, any lien arising under the provisions of this section shall be paramount to all liens and encumbrances or rights of any kind created by or against the person so contracting for such assistance when perfected in accordance with Uniform Commercial Code Article 9 – Secured Transactions (Section 75-9-101 et seq.), except the lien of the lessor of the land on which the crop is made, for rent and supplies furnished, as provided in the chapter on "Landlord and Tenant," appearing as Chapter 7 of Title 89, Mississippi Code of 1972.

(4) Any lien arising under the provisions of subsection (2) of this section in favor of any person other than an employee, laborer, cropper, part owner, overseer or manager as to crops or the proceeds thereof shall be effective against a third party only for a period of twenty-one (21) days from and after the time the labor is completed, unless within such period of time the lien is perfected in accordance with Uniform Commercial Code Article 9 – Secured Transactions (Section 75-9-101 et seq.). Any such lien in favor of any person other than an employee, laborer, cropper, overseer or manager which has not been perfected within the twenty-one-day period as herein provided shall, upon subsequent perfection of such lien, have the priority as against a third party to which a perfected security interest may be entitled under Uniform Commercial Code Article 9 – Secured Transactions (Section 75-9-101 et seq.).

HISTORY: Codes, 1880, § 1360; 1892, § 2682; 1906, § 3042; Hemingway's 1917, § 2400; 1930, § 2238; 1942, § 336; Laws, 1894, ch. 71; Laws, 1985, ch. 492; Laws, 2001, ch. 495, § 33, eff from and after Jan. 1, 2002.

Cross References — Requirement of paying employees twice a month, see §§ 71-1-35, 71-1-53.

Warehouseman's lien, see §§ 75-7-209, 75-7-210.

Carrier's lien, see §§ 75-7-307, 75-7-308.

Investment security issuer's lien, see § 75-8-103.

Exclusion of certain liens from operation of Uniform Commercial Code governing secured transactions, see § 75-9-104.

Place of filing to perfect security interest under Article 9 of Uniform Commercial Code, see § 75-9-401.

Enforcement of lien of state under the Petroleum Products Inspection Law, see § 75-55-37.

Lien of innkeepers on baggage, see § 75-73-15.

Requirement that tenants' goods not be removed until rent is paid, see § 89-7-1.

Tenant's remedy against landlord, see § 89-7-115.

JUDICIAL DECISIONS

ANALYSIS

1. Persons entitled to lien.
2. Property subject to lien.
3. Priority of liens.
4. Enforcement of lien.
5. Assignment of lien.
6. Waiver of lien.

1. Persons entitled to lien.

Ginner who gins and bales cotton for market has lien thereon for his charges. Quiver Gin Co. v. Looney, 144 Miss. 709, 111 So. 107, 1927 Miss. LEXIS 378 (Miss. 1927); Irwin v. Miller, 72 Miss. 174, 16 So. 678, 1894 Miss. LEXIS 108 (Miss. 1894); Duncan v. Jayne, 76 Miss. 133, 23 So. 392, 1898 Miss. LEXIS 55 (Miss. 1898).

Overseer has lien for wages under contract of employment where wrongfully discharged, less earnings elsewhere. Langford v. Leggett, 99 Miss. 266, 54 So. 856, 1911 Miss. LEXIS 203 (Miss. 1911).

It was held prior to the amendment in the law of 1894, incorporated above, that the overseer of the farm, in making a crop, had a lien for his wages. Weise v. Rutland, 71 Miss. 933, 15 So. 38, 1894 Miss. LEXIS 17 (Miss. 1894); Powell v. Smith, 74 Miss. 142, 20 So. 872, 1896 Miss. LEXIS 124 (Miss. 1896).

An employee on one plantation who merely for a few days supervises laborers sent therefrom to another plantation of his employer is not a laborer on the other plantation entitled to a lien on the crops grown thereon. Terry v. Groves, 71 Miss. 539, 14 So. 451, 1893 Miss. LEXIS 114 (Miss. 1893).

One employed as a wage hand and general laborer, and who aids in producing, gathering and ginning cotton grown on the plantation, has a lien on the cotton for his wages for all work done by him as a general laborer, including labor having no reference to the cotton. Lumbley v. Thomas, 65 Miss. 97, 5 So. 823, 1887 Miss. LEXIS 24 (Miss. 1887).

2. Property subject to lien.

Section 85-7-1 limits priority or paramount lien to crop for which labor was supplied; thus, while plaintiff may have been able to claim priority or paramount lien on cotton grower's 1982 crop, the year in which services were performed, it has no priority lien by virtue of statute on cotton grower's 1985 crop; furthermore, statute makes no provision for priority lien for supplier of materials such as fertilizer or chemicals and is limited in its application to suppliers of labor only. Flora Compress & Warehouse Co. v. Virden, 642 F. Supp. 466, 1986 U.S. Dist. LEXIS 25446 (S.D. Miss. 1986).

Where tenant was authorized to sell crop free from share croppers' liens and to turn buyers' checks over to landlord for collection, who was to turn back to tenant amounts due croppers to be turned over to them, such amounts were impressed with trust in hands of landlord, who knew funds constituted croppers' shares, and could not be applied on tenant's note notwithstanding tenant's consent thereto. Jackson v. Jefferson, 171 Miss. 774, 158 So. 486, 1935 Miss. LEXIS 13 (Miss. 1935).

3. Priority of liens.

A ginner has a lien superior to all other liens for his services where the preparation of the cotton for market is not otherwise provided for by the landlord or other interested party. Duncan v. Jayne, 76 Miss. 133, 23 So. 392, 1898 Miss. LEXIS 55 (Miss. 1898).

A ginner to whom cotton is delivered by the owner, and who gins the same, has a lien for his charges paramount to all others except that of the landlord. Irwin v. Miller, 72 Miss. 174, 16 So. 678, 1894 Miss. LEXIS 108 (Miss. 1894).

4. Enforcement of lien.

Since 11 U.S.C.S. § 546(b)(1)(A) recognized the effectiveness of state statutes which permit certain creditors to perfect a lien within a specified period of time that then takes priority over the existing liens of other creditors, the automatic bankruptcy stay thus did not apply under 11 U.S.C.S. § 362(b)(3) even though a creditor perfected its statutory crop lien for cotton ginning services one day after bankruptcy petitions were filed. In re

Crosthwait Cotton & Planting Co., 2003 Bankr. LEXIS 784 (Bankr. N.D. Miss. July 3, 2003).

The lien of an employee may be enforced against a purchaser of agricultural products, whether he buys with or without notice, and the burden is not on the plaintiff to show that he did not consent to the sale. Powell v. Smith, 74 Miss. 142, 20 So. 872, 1896 Miss. LEXIS 124 (Miss. 1896).

5. Assignment of lien.

The lien of a laborer is assignable. Kerr v. Moore, 54 Miss. 286, 1876 Miss. LEXIS 32 (Miss. 1876).

6. Waiver of lien.

Where tenant was authorized to sell crop free from share croppers' liens and to turn buyers' checks over to landlord for collection, who was to turn back to tenants amounts due croppers to be turned over to them, croppers' liens, though waived as to buyers of crops, were not waived as to proceeds in hands of tenant or landlord. Jackson v. Jefferson, 171 Miss. 774, 158 So. 486, 1935 Miss. LEXIS 13 (Miss. 1935).

Lien of assistant manager of plantation may be waived by course of dealing showing consent to disposition of crop. Williams v. Delta Grocery & Cotton Co., 159 Miss. 575, 132 So. 732, 1931 Miss. LEXIS 84 (Miss. 1931).

Course of dealing between assistant manager of plantation and owner for several years held to constitute waiver of former's lien on crop. Williams v. Delta Grocery & Cotton Co., 159 Miss. 575, 132 So. 732, 1931 Miss. LEXIS 84 (Miss. 1931).

Ginner's lien may be waived by course of dealings between parties. Quiver Gin Co. v. Looney, 144 Miss. 709, 111 So. 107, 1927 Miss. LEXIS 378 (Miss. 1927).

Ginner turning over gin receipts received on delivery of cotton to compress waived his lien thereon. Quiver Gin Co. v. Looney, 144 Miss. 709, 111 So. 107, 1927 Miss. LEXIS 378 (Miss. 1927).

Where the manager of a plantation ships cotton to be sold in the market of a neighboring town, he waives his lien under this section [Code 1942, § 336], and cannot maintain a suit against a factor who had received the cotton of the consignee and sold it, applying the proceeds to the credit of the plantation or its owner. McCormick v. Blum, 75 Miss. 81, 21 So. 707, 1897 Miss. LEXIS 91 (Miss. 1897).

RESEARCH REFERENCES

ALR.

Bailee's lien for work on goods as extending to other goods of the bailor in his possession. 25 A.L.R.2d 1037.

Sufficiency of notice, claim, or statement of mechanic's lien with respect to description or location of real property. 52 A.L.R.2d 12.

Filing of mechanics' lien or proceeding for its enforcement as affecting right to arbitration. 73 A.L.R.3d 1066.

Am. Jur.

7 Am. Jur. Legal Forms 2d, Crops § 80:81 (lessor's lien on lessee's interest in crops and pasturage).

§ 85-7-3. Sawmill employees and timber men; lien on lumber and timber.

Every employee or laborer of an employer engaged in the operation of a sawmill or planing mill or in cutting and shipping or rafting timber shall have a lien on all such lumber and timber for his wages due by such employer in preference to all other debts of the said employer; but such lien shall take effect as to purchases or incumbrances for a valuable consideration without notice thereof only from the time of commencing judicial proceedings to enforce the lien, and unless such proceedings have been begun the said lien shall expire six (6) months after the claim is due.

HISTORY: Codes, Hemingway's 1917, §§ 2415, 2416, 2417; 1930, § 2240; 1942, § 338; Laws, 1908, ch. 131; Laws, 1922, ch. 282.

Cross References — Warehouseman's lien, see §§ 75-7-209, 75-7-210.

Carrier's lien, see §§ 75-7-307, 75-7-308.

Investment security issuer's lien, see § 75-8-103.

Exclusion of certain liens from operation of Uniform Commercial Code governing secured transactions, see § 75-9-104.

Salvage of abandoned logs, see §§ 89-17-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Persons entitled to lien.
3. Property subject to lien.
4. Priority of liens.
5. Enforcement of lien.

1. In general.

"Employee" includes a larger class than "laborer." Hinton & Walker v. Pearson, 142 Miss. 50, 107 So. 275, 1926 Miss. LEXIS 64 (Miss. 1926), overruled, McDonald v. Hall-Neely Lumber Co., 165 Miss. 143, 147 So. 315, 1933 Miss. LEXIS 294 (Miss. 1933).

2. Persons entitled to lien.

Person employed by operator of sawmill to haul logs owned by another for sawing under contract was not entitled to lien for services. Held v. Surber, 158 Miss. 799, 131 So. 420, 1930 Miss. LEXIS 120 (Miss. 1930).

One merely furnishing teams for hauling logs is not an "employee or laborer" entitled to lien. Weeks v. Seale, 143 Miss. 222, 108 So. 505, 1926 Miss. LEXIS 259 (Miss. 1926).

Persons hauling lumber to railroad were "employees" entitled to lien. Hinton & Walker v. Pearson, 142 Miss. 50, 107 So. 275, 1926 Miss. LEXIS 64 (Miss. 1926), overruled, McDonald v. Hall-Neely Lumber Co., 165 Miss. 143, 147 So. 315, 1933 Miss. LEXIS 294 (Miss. 1933).

3. Property subject to lien.

Lien on timber for labor or services exists only on timber of laborers' employer, thereby excluding lien on that not owned by employer. Held v. Surber, 158 Miss. 799, 131 So. 420, 1930 Miss. LEXIS 120 (Miss. 1930).

Evidence as to ownership of lumber on which lien was claimed was sufficient to go to jury. Broadus v. Calhoun, 139 Miss. 28, 103 So. 808, 1925 Miss. LEXIS 125 (Miss. 1925).

4. Priority of liens.

Lien on lumber of operator of sawmill of employees for wages is superior to that of one who sold the logs and let the mill to operator. O'Quinn v. Grace, 143 Miss. 655, 109 So. 672, 1926 Miss. LEXIS 304 (Miss. 1926).

5. Enforcement of lien.

Employees of sawmill have concurrent lien on employer's lumber enforceable in chancery by all in one suit. Cooley v. Tullos, 115 Miss. 268, 76 So. 263, 1917 Miss. LEXIS 207 (Miss. 1917).

RESEARCH REFERENCES

Am. Jur.

12 Am. Jur. Legal Forms 2d, Liens 165:19 et seq. (notices).

§ 85-7-5. Owner of stallion, jackass, or bull; lien on foal or calf.

The owner of a stallion, jackass or bull shall have a lien on each foal begotten by his stallion or jackass, and on each calf begotten by his bull, for the price agreed to be paid therefor, and such lien shall be prior to all other incumbrances on such foal or calf and shall bind the same even in the hands of subsequent purchasers and encumbrancers for a valuable consideration without notice; but the said lien shall expire twelve months after the birth of said foal or calf unless within that time judicial proceedings have been begun to enforce the lien. If the owner shall have falsely represented the breeding, registration, or pedigree of his stallion, jackass or bull, by advertisement or otherwise, he shall not have a lien on the foal begotten by such stallion or jackass, or on the calf of such bull, as against any person who acted under the belief that such representation was true; and, in such case, the owner of the animal shall not have any claim for the service of the stallion, jackass, or bull.

HISTORY: Codes, 1880, § 1394; 1892, §§ 2716, 2717, 2718; 1906, §§ 3076, 3077, 3078; Hemingway's 1917, §§ 2439, 2440, 2441; 1930, § 2241; 1942, § 339; Laws, 1888, p. 90; Laws, 1934, ch. 312; Laws, 1936, ch. 295.

Cross References — Exclusion of certain liens from operation of Uniform Commercial Code governing secured transactions, see § 75-9-104.

RESEARCH REFERENCES

ALR.
Contracts for breeding horses. 34 A.L.R.5th 651.

§ 85-7-7. Water craft; work, materials, supplies, etc.

There shall be a lien on all ships, steamboats and other water craft for work done or materials supplied by any person in this state for or concerning the building, repairing, fitting, furnishing, supplying or victualing such ships, steamboats or other water craft, and for the wages of the persons employed on board such vessel, boat, or craft, for work done or services rendered, in preference to all other debts due and owing from the owners thereof. The said lien shall expire six (6) months after the claim is due, unless judicial proceedings have been commenced to assert it.

HISTORY: Codes, 1880, § 1395; 1892, § 2725; 1906, § 3085; Hemingway's 1917, §§ 2445, 2447; 1930, § 2242; 1942, § 340.

Cross References — Warehouseman's lien, see §§ 75-7-209, 75-7-210.
Carrier's lien, see §§ 75-7-307, 75-7-308.
Exclusion of certain liens from operation of Uniform Commercial Code governing secured transactions, see § 75-9-104.
Effect of writ of execution for the sale of steamboat or watercraft, see § 85-7-53.
Salvage of abandoned boats, see §§ 89-17-1 et seq.

JUDICIAL DECISIONS

1. In general.
This section [Code 1942, § 340] does not abrogate common-law right of lien for services in repair of boat in possession of

repairer. Kornosky v. Hoyle, 97 Miss. 562, 52 So. 481, 1910 Miss. LEXIS 239 (Miss. 1910).

Debts for materials, supplies and labor created in the performance of a contract to repair a ship are not liens on the vessel, under this section [Code 1942, § 340], when they were created by an independent contractor who was in no sense an agent of the ship owner. Valverde v. Spottswood, 77 Miss. 912, 28 So. 720, 1990 Miss. LEXIS 901 (Miss. 1990).

§ 85-7-9. Water craft; municipal dockage, wharfage, or anchorage charges.

(1) There shall be a lien on all skiffs, yachts, and other water craft in favor of any municipality operating a small craft or yacht harbor or basin for dockage, wharfage or anchorage charges for space or anchorage contracted for by the water craft or its owner or agent where the charge for such space or anchorage is made for a period of time without regard to the actual time such skiff, yacht or other water craft is actually docked or anchored to the dock, wharf, or at the mooring place in the basin. Such lien shall be paramount to all other debts due and owing by such water craft, or the owner thereof, or other lien thereon, except as provided by Section 85-7-7.

(2) The lien, by this section provided, shall be enforced as provided by Sections 85-7-31 through 85-7-53, inclusive.

HISTORY: Codes, 1942, § 340-01; Laws, 1946, ch. 290, §§ 1, 2.

Cross References — Municipal piers and bathhouses, see § 21-37-13.

Municipal harbors and wharves, see § 21-37-15.

Warehouseman's lien, see §§ 75-7-209, 75-7-210.

Carrier's lien, see §§ 75-7-307, 75-7-308.

Exclusion of certain liens from operation of Uniform Commercial Code governing secured transactions, see § 75-9-104.

Municipal dockage, wharfage, or anchorage charges, see § 85-7-9.

RESEARCH REFERENCES

Am. Jur.

79 Am. Jur. 2d, Wharves § 34.

SUITS TO ENFORCE LIENS ON CROPS, ADVANCES, LUMBER, TIMBER, FOALS, CALVES AND WATER CRAFT

Sec.

85-7-31. Commencement of suit.
85-7-33. Non-resident or unknown parties.
85-7-35. Precedents.
85-7-37. Affidavit.
85-7-39. Writ; form.
85-7-41. Writ; where returnable.
85-7-43. Writ; when returnable.
85-7-45. Writ; return to wrong court not to affect the case.
85-7-47. Replevy of property seized.

Sec.	
85-7-49.	Issue and judgment.
85-7-51.	Death of party not to abate suit.
85-7-53.	Sale of steamboat or water craft and its effect.

§ 85-7-31. Commencement of suit.

A person having any lien in Sections 85-7-1 through 85-7-9 may enforce the same by making affidavit before any officer authorized to administer oaths of any county where the subject-matter of the lien may be, describing therein the property sought to be subjected, setting forth his claim, share or interest therein, and asserting his lien thereon, with an itemized account of his demand, and giving the names of the persons interested therein, and of those, if any, who have a like or other claim or interest in such property; whereupon the clerk or justice shall issue a writ directed to the proper officer and returnable to the proper court, commanding the officer to seize the property, or so much thereof as may be necessary to satisfy the plaintiff's demand and costs, and to summon the persons named in the affidavit as interested therein, to appear in the court designated, at the time fixed, to answer the complaint.

HISTORY: Codes, 1880, §§ 1363, 1364; 1892, § 2684; 1906, § 3044; Hemingway's 1917, § 2402; 1930, § 2243; 1942, § 341.

Editor's Notes — Pursuant to Miss. Const. Art. 6, § 171, all references in the Mississippi Code to justice of the peace shall mean justice court judge.

Cross References — Attachment of perishable commodities, see §§ 11-1-43 et seq.

Replevin, attachment, and lien proceedings before justices of the peace, see § 11-9-135.

Arbitration of controversies arising out of construction contracts and related agreements, and failure of arbitration to effect liens, see § 11-15-101.

Writ to seize property and subsequent proceedings thereto, see § 11-21-77.

Enforcement of lien which is upon an animal, see § 69-13-21.

Selling of hotel guest's baggage, see § 75-73-17.

How and when lien is enforced, see § 85-7-141.

Seizure of ward's property which is about to be removed by guardian, see § 93-13-65.

JUDICIAL DECISIONS

ANALYSIS

1. Persons entitled to enforce lien.
2. Affidavit, sufficiency of.
3. —Amendment of.
4. —Itemized account.
5. Evidence.

1. Persons entitled to enforce lien.

In a case in which the owner of two multimillion-dollar yachts under construction challenged a lien the unpaid paint supplier established and enforced on the yachts under the Water Craft Seizure Act, summary judgment was properly granted in favor of the owner because privity did not exist between the owner and the paint supplier; the specification of the brand of paint and the painter supplier in the contract between the owner and the independent contractor did not establish privity between the owner and the paint supplier; and the amendment to the master service agreement did not operate retroactively to create privity between the owner and the paint supplier sufficient to create a lien in the paint supplier's favor. Trinity Yachts, LLC v.

Mike & Jerry's Paint & Supply (In re Lien), 152 So. 3d 286, 2014 Miss. LEXIS 602 (Miss. 2014).

A Mississippi court could not adjudicate or judicially establish a mechanic's lien against a tractor not situated within the boundaries of the state; under state law, a proceeding to establish a mechanic's lien is a proceeding in rem against the property and not a proceeding in personam, even though the owner must be named as a party to the suit. Crawler Parts, Inc. v. Laclede Land & Livestock Co., 374 So. 2d 798, 1979 Miss. LEXIS 2364 (Miss. 1979).

Where purchaser of a car under a retained title contract incurred a bill for repairs which was necessary for preservation and the operation of the automobile and to prevent its deterioration, the mechanic was entitled to enforce a mechanic's lien which was superior to the rights of the seller who repossessed the car upon a default on the contract. Commercial Sec. Co. v. Kriner, 53 So. 2d 92 (Miss. 1951).

One who makes oral sale and delivery of a motor on credit, without retaining title to, or lien upon, motor to secure purchase price, has a statutory lien under Code 1942, § 337 upon motor as security for debt which vests him with right to have property seized by officer and for personal judgment for his demand and for sale of property through processes of court to satisfy his demand. Runnels v. Fairchild, 204 Miss. 287, 37 So. 2d 312, 1948 Miss. LEXIS 363 (Miss. 1948).

The assignee of a laborer's lien may enforce it in the same manner and to the same extent as the laborer. Kerr v. Moore, 54 Miss. 286, 1876 Miss. LEXIS 32 (Miss. 1876).

2. Affidavit, sufficiency of.

Proceeding for seizure of property on which seller had purchase-money lien was not invalid because affidavit for seizure was made before officer in another state, since statute, providing that person having purchase-money lien "can enforce same" by making affidavit before proper officer of county where subject-matter of lien may be, is not mandatory. Parker v. McCaskey Register Co., 177 Miss. 347, 171 So. 337, 1936 Miss. LEXIS 277 (Miss. 1936).

Proceeding for enforcement of purchase-money lien was not invalid because seller did not show notary public, before whom affidavit of seizure which was made in Ohio was taken, had authority to take and certify affidavits, since court would take judicial notice of Ohio law authorizing notary public to administer and certify oaths. Parker v. McCaskey Register Co., 177 Miss. 347, 171 So. 337, 1936 Miss. LEXIS 277 (Miss. 1936).

In proceeding to enforce seller's purchase-money lien brought in justice court and appealed to circuit court, permitting seller to file, in circuit court, affidavit for writ of seizure was proper although, because of amount involved, circuit court would not have had original jurisdiction. Parker v. McCaskey Register Co., 177 Miss. 347, 171 So. 337, 1936 Miss. LEXIS 277 (Miss. 1936).

The justice before whom the affidavit was made, and who failed to affix his signature, may affix his name thereto in open court after motion to dismiss the case for want of an affidavit. Hartsell v. Myers, 57 Miss. 135, 1879 Miss. LEXIS 31 (Miss. 1879).

3. —Amendment of.

County court's allowance of an amendment to correct the description of certain tires and tubes and making the description applicable to both the declaration and the affidavit, was proper exercise of its discretion in light of the fact that the defendants were not prejudiced. Hannan Motor Co. v. Darr, 212 Miss. 870, 56 So. 2d 64, 1952 Miss. LEXIS 320 (Miss. 1952).

The affidavit may be amended by adding the names of others interested with the affiant. May v. Williams, 61 Miss. 125, 1883 Miss. LEXIS 84 (Miss. 1883).

4. —Itemized account.

Where the defendant contested the claim of mechanic's lien on a truck and also objected that the account was not properly itemized, but filed no pleadings questioning the account and the defendant did not follow the statute as to the methods of contesting claims, and the answer of the defendant in effect admitted the correctness of the amount, the defendant waived any objection. Hannan Motor

Co. v. Darr, 212 Miss. 870, 56 So. 2d 64, 1952 Miss. LEXIS 320 (Miss. 1952).

An itemized account is unnecessary where the affidavit filed by a laborer to enforce his lien for wages contains as full information as could be given by the filing of an independent paper, and his claim rests upon a contract for a definite sum per month and does not consist of items. Baldwin v. Morgan, 73 Miss. 276, 18 So. 919, 1895 Miss. LEXIS 108 (Miss. 1895).

5. Evidence.

In proceeding to enforce purchase-money lien for unpaid balance due on an accounting machine for use of business establishment, evidence that salesman misrepresented machine and that purchasers received offer to buy machine from third party, who, upon being told by seller that it would not recognize proposed purchase, refused to complete the transaction, held inadmissible to contradict terms of contract providing that it could not be changed by oral agreement and that machine could not be sold without consent of seller. Parker v. McCaskey Register Co., 177 Miss. 347, 171 So. 337, 1936 Miss. LEXIS 277 (Miss. 1936).

RESEARCH REFERENCES

ALR.

Architect's services as within mechanics' lien statute. 31 A.L.R.5th 664.

Am. Jur.

51 Am. Jur. 2d, Liens §§ 83 et seq.

53 Am. Jur. 2d, Mechanics' Liens §§ 333 et seq.

CJS.

53 C.J.S., Liens §§ 46, 50 et seq.

§ 85-7-33. Non-resident or unknown parties.

If any party in interest be a non-resident of the state, or his whereabouts be unknown, he may be made a party to the suit and be proceeded against as in case of suits by attachment against such persons.

HISTORY: Codes, 1880, § 1370; 1892, § 2690; 1906, § 3050; Hemingway's 1917, § 2408; 1930, § 2244; 1942, § 342.

Cross References — Remedy of attachment, see §§ 11-33-1 et seq.

RESEARCH REFERENCES

ALR.

Residence of partnership for purposes of statutes authorizing attachment or garnishment on ground of nonresidence. 9 A.L.R.2d 471.

Am. Jur.

51 Am. Jur. 2d, Liens § 86.

§ 85-7-35. Precedents.

Affidavits and writs in the form of the following precedents shall be sufficient in cases of employer and employee, and in other cases the form shall vary so as to conform to the facts.

HISTORY: Codes, 1880, § 1373; 1892, § 2693; 1906, § 3053; Hemingway's 1917, § 2411; 1930, § 2245; 1942, § 343.

§ 85-7-37. Affidavit.

"State of Mississippi, ________ County

"Before me, ________, a justice of the peace of the said county, ________ makes oath that he was employed by ________ during the year A. D. ________, as a laborer, and as such, and under his employment, assisted to make a crop of cotton and corn, which yielded ________ bales of cotton and ________ bushels of corn, which are now in the possession of ________, and the same is at ________, in said county; and that affiant is, by his contract and services, entitled to one-half of said cotton and corn, the same being of the value of ________ dollars, which the said ________ withholds from him [or whatever may be the claim]. Affiant claims a lien on all of said cotton and corn for the recovery of his share or interest therein, and that ________ and ________ claim a like lien thereon. Affiant prays process according to law.

"____________________"

"Sworn to and subscribed before me, the ________ day of ________, A. D.

"____________________, J. P."

HISTORY: Codes, 1880, § 1374; 1892, § 2694; 1906, § 3054; Hemingway's 1917, § 2412; 1930, § 2246; 1942, § 344.

Editor's Notes — Pursuant to Miss. Const. Art. 6, § 171, all references in the Mississippi Code to justice of the peace shall mean justice court judge.

§ 85-7-39. Writ; form.

"The State of Mississippi.

"To any lawful officer of ________ county:

"We command you forthwith to take into your possession and dispose of, according to law, ________ bales of cotton and ________ bushels of corn, now in the possession of ________, believed to be at ________, in your county, as it is said, or so much thereof as will be sufficient to satisfy the claim of ________, who asserts an interest therein to the extent of one-half thereof, which he avers is of the value of ________ dollars [or who claims a lien thereon for ________ dollars, alleged to be due him for his wages as a laborer in producing said articles, or whatever the claim may be, as set forth in the affidavit], for his labor in producing said articles, and summon the said ________ [and any others shown by the affidavit to have an adverse claim to said articles] to appear before the undersigned, a justice of the peace of said county, at ________, on ________, the ________ day of ________ A. D. ________, at ________ o'clock, ________.M., to answer said claim, and have this writ there then.

"Witness my hand, the ________ day of ________, A. D. ________.

"____________________, J. P."

HISTORY: Codes, 1880, § 1375; 1892, § 2695; 1906, § 3055; Hemingway's 1917, § 2413; 1930, § 2247; 1942, § 345.

Editor's Notes — Pursuant to Miss. Const. Art. 6, § 171, all references in the Mississippi Code to justice of the peace shall mean justice court judge.

§ 85-7-41. Writ; where returnable.

The writ shall be returnable before the justice of the peace who issued it or some other justice of the peace, if the principal of the sum claimed does not exceed Two Hundred Dollars ($200.00), and, if it does, it shall be returnable to the circuit court; and in such case the affidavit shall be filed, by the officer who issued the writ, in the office of the clerk of the circuit court, on or before the return day of the writ.

HISTORY: Codes, 1880, § 1365; 1892, § 2685; 1906, § 3045; Hemingway's 1917, § 2403; 1930, § 2248; 1942, § 346.

Editor's Notes — Pursuant to Miss. Const. Art. 6, § 171, all references in the Mississippi Code to justice of the peace shall mean justice court judge.

JUDICIAL DECISIONS

1. In general.

The jurisdiction of the court is determinable by the amount demanded and not by the value of the property seized. May v. Williams, 61 Miss. 125, 1883 Miss. LEXIS 84 (Miss. 1883).

RESEARCH REFERENCES

ALR.

Abandonment of construction or of contract as affecting time for filing mechanics' liens or time for giving notice to owner. 52 A.L.R.3d 797.

§ 85-7-43. Writ; when returnable.

The writ, when returnable before a justice of the peace, may be made returnable at any time which will give the parties in interest five (5) days' notice before trial; and when returnable to the circuit court, it may be executed at any time before the first day of the term, and the cause shall be triable at such term.

HISTORY: Codes, 1880, § 1366; 1892, § 2686; 1906, § 3046; Hemingway's 1917, § 2404; 1930, § 2249; 1942, § 347.

Editor's Notes — Pursuant to Miss. Const. Art. 6, § 171, all references in the Mississippi Code to justice of the peace shall mean justice court judge.

§ 85-7-45. Writ; return to wrong court not to affect the case.

If the writ be made returnable to the wrong court, the case shall not be dismissed nor affected thereby, but shall be transferred to the proper court, and the cause shall be there proceeded with as if the writ had been made returnable there; and any bond given shall not be affected by such mistake, but it may be proceeded on in the proper court.

HISTORY: Codes, 1880, § 1367; 1892, § 2687; 1906, § 3047; Hemingway's 1917, § 2405; 1930, § 2250; 1942, § 348.

§ 85-7-47. Replevy of property seized.

The defendant, or any person interested, may give bond, with sufficient sureties, and replevy the property seized, as provided in the action of replevin; and the rights of the parties respectively to give such bond and receive the property from the officer, and the condition of the bond, the necessary changes being made, and the duty of the officer to take it and his liability thereon, and the disposition he shall make of the property if bond be not given, and the proceeding on such bond, shall be as provided for in the like case in the action of replevin; and any bond given shall inure to the person in whose favor judgment may be given in the case, as if it were payable to him.

HISTORY: Codes, 1880, § 1368; 1892, § 2688; 1906, § 3048; Hemingway's 1917, § 2406; 1930, § 2251; 1942, § 349.

JUDICIAL DECISIONS

1. In general.

Where, upon a corporation's default in the payment of notes executed for the part payment of certain personal property, obligors executed a bond binding themselves to pay a stated sum unless the described property was before the court at a certain time to satisfy a judgment in a replevin action by the seller against the corporate purchaser, and the property had been surrendered to the sheriff, who had sold it and applied the proceeds to the personal judgment of the seller against the corporate purchaser, personal judgment should not have been entered against the obligors. Cannady v. Morris, 232 Miss. 278, 98 So. 2d 768, 1957 Miss. LEXIS 472 (Miss. 1957).

Liability of sureties on replevin bond executed in laborer's lien proceedings is for return of property or its value ascertained by jury. Coleman v. Bowman, 135 Miss. 137, 99 So. 465, 1924 Miss. LEXIS 5 (Miss. 1924).

§ 85-7-49. Issue and judgment.

Any person interested may contest the demand of the plaintiff on the return day of the writ, if returned, or on any day before the rendition of final judgment in the case, by filing a statement in writing, under oath, of his defense or claim, itemizing his account, if any he has; and the case shall be then at issue between the parties, and shall be tried as other cases in the court. And the judgment of the court shall be framed so as to adjust the rights of the several parties as to the subject-matter of the suit; and judgment may be given against the party liable thereto for any amount, and for the sale of any goods in the hands of the officer, and for any balance not obtained from the sale of the goods, to be made by execution as in other cases, and the costs may be adjudged as the court may consider just; and as many judgments shall be rendered as may be necessary to adjust the rights of the several parties.

HISTORY: Codes, 1880, § 1369; 1892, § 2689; 1906, § 3049; Hemingway's 1917, § 2407; 1930, § 2252; 1942, § 350.

Cross References — Trial of right of property, see §§ 11-23-7 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. Pleadings.
2. Judgment.
3. Costs.

1. Pleadings.

Where the defendant contested the claim of mechanic's lien on a truck and also objected that the account was not properly itemized, but filed no pleadings questioning the account and the defendant did not follow the statute as to the methods of contesting claims, and the answer of the defendant in effect admitted the correctness of the amount, the defendant waived any objection. Hannan Motor Co. v. Darr, 212 Miss. 870, 56 So. 2d 64, 1952 Miss. LEXIS 320 (Miss. 1952).

Where defendant's answer alleged agreement of plaintiffs to settlement it was unnecessary for him to file an itemized statement of payments made. Easterling v. Shaifer, 38 So. 230 (Miss. 1905).

Where defendant pleaded payment he was entitled to introduce itemized account of payments made without filing it. Easterling v. Shaifer, 38 So. 230 (Miss. 1905).

2. Judgment.

Where purchaser of a car under a retained title contract incurred a bill for repairs which was necessary for preservation and the operation of the automobile and to prevent its deterioration, the mechanic was entitled to enforce a mechanic's lien which was superior to the rights of the seller who repossessed the car upon a default on the contract. Commercial Sec. Co. v. Kriner, 53 So. 2d 92 (Miss. 1951).

Variance as to date of contract did not justify peremptory instruction. Hill v. Judd, 96 So. 849 (Miss. 1923).

In enforcement of laborer's lien against seed, giving judgment against replevin bond without proof of value of seed is error. McCoy v. Tolar, 128 Miss. 202, 90 So. 628, 1921 Miss. LEXIS 305 (Miss. 1921).

Peremptory instruction for plaintiff was erroneous where defendant pleaded payment by sworn written statement as defense to suit to fix mechanic's lien. Easterling v. Shaifer, 38 So. 230 (Miss. 1905).

The proceeding to enforce the lien is both in rem and in personam, general judgment being rendered against the person liable and the property seized condemned to be sold for its satisfaction. May v. Williams, 61 Miss. 125, 1883 Miss. LEXIS 84 (Miss. 1883).

3. Costs.

Costs should be awarded against the person who, in view of all the circumstances, ought equitably to bear it. May v. Williams, 61 Miss. 125, 1883 Miss. LEXIS 84 (Miss. 1883).

RESEARCH REFERENCES

Am. Jur.

51 Am. Jur. 2d, Liens § 93.

53 Am. Jur. 2d, Mechanics' Liens §§ 409 et seq.

17 Am. Jur. Pl & Pr Forms (Rev) Mechanics' Liens, Forms 171 et seq. (judgments or decrees).

§ 85-7-51. Death of party not to abate suit.

If any party to the suit die, it shall not abate, but may be proceeded with as in other personal actions in such case; and if any party thereto die after judgment, the same may be executed and enforced as judgments in other personal actions in such case.

HISTORY: Codes, 1880, § 1370; 1892, § 2691; 1906, § 3051; Hemingway's 1917, § 2409; 1930, § 2253; 1942, § 351.

§ 85-7-53. Sale of steamboat or water craft and its effect.

If the special writ of execution be for the sale of a steamboat or other water craft, the officer shall levy on, advertise and sell the same as personal property too cumbersome to be moved is levied on and sold for debt; and the purchaser shall acquire the same free from all prior encumbrances saving the rights of those having concurrent liens under this chapter.

HISTORY: Codes, 1892, § 2711; 1906, § 3071; Hemingway's 1917, § 2431; 1930, § 2254; 1942, § 352.

Cross References — Lien on watercraft, see § 85-7-7.
Salvage of abandoned boats, see §§ 89-17-1 et seq.

ARTICLE 3.

SALE OF TIMEPIECE, JEWELRY, ETC. FOR REPAIR CHARGES.

Sec.
85-7-71. Definition.
85-7-73. Sale of watches, jewelry, etc., left over 90 days for repairs, etc. permitted.
85-7-75. Notice to owners.
85-7-77. Sale; disposition of proceeds.
85-7-79. Notices required to be posted.
85-7-81. Purpose and intent of Sections 85-7-71 through 85-7-81.

§ 85-7-71. Definition.

As used in Sections 85-7-71 through 85-7-81, the term "person" shall mean a natural person, partnership, corporation, or other legal entity.

HISTORY: Codes, 1942, § 352.5; Laws, 1964, ch. 377, eff from and after passage (approved April 23, 1964).

§ 85-7-73. Sale of watches, jewelry, etc., left over 90 days for repairs, etc. permitted.

Any watch, clock, timepiece, ring, jewelry, or other item, which has been repaired, altered, cleaned, sized, rebuilt, adjusted, or regulated, remaining in the possession of a person for a period of ninety (90) days or more, may be sold to pay reasonable or agreed charges, together with any costs or expenses provided for in Sections 85-7-71 through 85-7-81. Provided, however, that the person to whom such charges are payable and owing shall first notify the owner or owners of the proposed sale of the articles belonging to them and the amount of the charges due thereon.

HISTORY: Codes, 1942, § 352.5; Laws, 1964, ch. 377, eff from and after passage (approved April 23, 1964).

RESEARCH REFERENCES

Am. Jur.
12 Am. Jur. Legal Forms 2d, Liens § 165:24 (notice of lien and of sale-jeweler's lien for repairs).

§ 85-7-75. Notice to owners.

The mailing by registered or certified United States mail of a letter, with a return address marked thereon, addressed to the owner or owners at their address given at the time of delivery of such articles to the person, shall constitute notice under the provisions of Sections 85-7-71 through 85-7-81. Said notice shall be mailed at least thirty (30) days before the articles belonging to such owner or owners may be sold for charges due thereon. The cost of mailing said letter shall be added to the charges.

HISTORY: Codes, 1942, § 352.5; Laws, 1964, ch. 377, eff from and after passage (approved April 23, 1964).

§ 85-7-77. Sale; disposition of proceeds.

If the chattel or chattels are not redeemed within thirty (30) days after the mailing of such letter, the person may sell such articles on the day and at the time and place specified in such letter. Such sales may be made either at public auction or by private sale. The proceeds of the sale in excess of the charges and necessary expenses of the procedure required by Sections 85-7-71 through 85-7-81 shall be held by the person for a period of six (6) months and if not reclaimed by the owner thereof within that time shall escheat to the county and be paid over to the chancery clerk to be placed into the general fund of the county in which the sale was held.

HISTORY: Codes, 1942, § 352.5; Laws, 1964, ch. 377, eff from and after passage (approved April 23, 1964).

§ 85-7-79. Notices required to be posted.

All persons taking advantage of Sections 85-7-71 through 85-7-81 must keep posted at all times in a prominent place in their receiving office or offices two (2) notices which read as follows: "All watches, clocks, timepieces, rings, jewelry, or other items, which have been repaired, altered, cleaned, sized, rebuilt, adjusted, or regulated, and not called for in ninety (90) days, will be sold to pay charges."

HISTORY: Codes, 1942, § 352.5; Laws, 1964, ch. 377, eff from and after passage (approved April 23, 1964).

RESEARCH REFERENCES

Am. Jur.
12 Am. Jur. Legal Forms 2d, Liens § 165:24 (notice of lien and of sale-jeweler's lien for repairs).

§ 85-7-81. Purpose and intent of Sections 85-7-71 through 85-7-81.

The purpose and intent of Sections 85-7-71 through 85-7-81 is to provide an inexpensive means of enforcing liens for small amounts, and to that end the provisions of said sections shall be construed to create a lien in addition to, and shall not exclude, any liens which may exist by virtue of either the common law or any other statute of the State of Mississippi.

HISTORY: Codes, 1942, § 352.5; Laws, 1964, ch. 377, eff from and after passage (approved April 23, 1964).

ARTICLE 5.

MECHANICS AND STABLEKEEPERS.

Sec.	
85-7-101.	Articles constructed, manufactured or repaired; lien for labor and materials.
85-7-103.	Stable keepers; lien on animals.
85-7-105.	Remedy where lienholder loses possession to owner.
85-7-107.	Lien on motor vehicle for labor and materials used in constructing, manufacturing or repairing vehicle; notice to legal owner and holder of any lien; judgment on lien; redemption; sale of vehicle.

§ 85-7-101. Articles constructed, manufactured or repaired; lien for labor and materials.

Except as otherwise provided in Section 85-7-107, all carriages, buggies, wagons, plows, or any article constructed, manufactured or repaired for any person, and at his instance, shall be liable for the price of the labor and material employed in constructing, manufacturing or repairing the same; and the mechanic to whom the price of said labor and material may be due shall have the right to retain possession of such things so constructed, manufactured or repaired until the price be paid; and if the same shall not be paid within thirty (30) days, he may commence his suit in any court of competent jurisdiction and upon proof of the value of the labor and materials employed in such repairs, manufacture or construction, he shall be entitled to judgment against the party for whom such labor was done or materials furnished, with costs, as in other cases, and to a special order for the sale of the property retained in his possession for the payment thereof, with costs, and to an execution, as in other cases, for the residue of what remains unpaid after sale of the property.

HISTORY: Codes, 1880, § 1383; 1892, § 2715; 1906, § 3075; Hemingway's 1917, § 2435; 1930, § 2255; 1942, § 353; Laws, 1988, ch. 542, § 2, eff from and after July 1, 1988.

Cross References — Arbitration of controversies arising out of construction contracts and related agreements, and failure of arbitration to effect liens, see § 11-15-101.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Construction, manufacture, or repair, what constitutes.
3. Persons entitled to lien.
4. Surrender of possession.
5. Priority of liens.
6. Liability.
7. Actions to enforce liens.
8. Judgment.

1. In general.

Mechanic's lien and storage lien statutes which were advanced by a party, who repaired and then stored an excavator, did not allow attorney's fees. Caterpillar Fin. Servs. Corp. v. Burroughs Diesel, Inc., 125 So. 3d 659, 2013 Miss. App. LEXIS 175 (Miss. Ct. App.), cert. denied, 125 So. 3d 658, 2013 Miss. LEXIS 586 (Miss. 2013).

The lien of one making necessary repairs to an automobile is not lost by a void sale to foreclose the lien at which he became the purchaser. Mississippi Motor Finance, Inc. v. Thomas, 246 Miss. 14, 149 So. 2d 20, 1963 Miss. LEXIS 411 (Miss. 1963).

The right of a plaintiff to obtain a personal judgment where he asserts a mechanic's lien against the truck was one which the plaintiff could exercise in his own discretion. Hannan Motor Co. v. Darr, 212 Miss. 870, 56 So. 2d 64, 1952 Miss. LEXIS 320 (Miss. 1952).

Whether a new battery, battery cable, additional oil pumps and several sets of "points" were reasonably necessary for the preservation and operation of an automobile and to prevent its deterioration would depend upon proof as to the conditions of those of the same kind and character that had been recently purchased for the same purpose at the time the last ones were installed. Eastex Finance Co. v. Bryant, 207 Miss. 414, 42 So. 2d 418, 1949 Miss. LEXIS 351 (Miss. 1949).

This section [Code 1942, § 353] does not merely give the mechanic the right to acquire a lien on machinery and equipment, but creates such lien. Billups v. Becker's Welding & Machine Co., 186 Miss. 41, 189 So. 526, 1939 Miss. LEXIS 219 (Miss. 1939); Buckwalter v. McElroy, 205 Miss. 54, 38 So. 2d 317, 1949 Miss. LEXIS 411 (Miss. 1949).

Statute declares right and lien had at common law and provides a method for enforcement thereof. J. A. Broom & Son v. S. S. Dale & Sons, 109 Miss. 52, 67 So. 659, 1915 Miss. LEXIS 112 (Miss. 1915).

2. Construction, manufacture, or repair, what constitutes.

Work of disassembling, hauling, and reassembling an oil well drilling rig does not constitute construction, manufacture, or repair within the meaning of this section [Code 1942, § 353], and such activities are insufficient to afford the person performing them a lien for the value of his services. White v. Cabot Corp., 194 So. 2d 499, 1967 Miss. LEXIS 1414 (Miss. 1967).

"Construct" as used in this section [Code 1942, § 353] providing that any article constructed shall be liable for price of labor and material employed in the constructing means to put together the constituent parts of something in their proper place and order, and lien given under this section may be enforced in same manner as in cases of lien for purchase money of goods. Buckwalter v. McElroy, 205 Miss. 54, 38 So. 2d 317, 1949 Miss. LEXIS 411 (Miss. 1949).

3. Persons entitled to lien.

Conditional vendor of oil well drilling rig is entitled to repossess the same from one who retained it and asserted a lien thereon for the cost of disassembling, transporting, and reassembling it, but who had done no work in connection with the rig which constituted construction, manufacture, or repair, as those words are used in this section [Code 1942, § 353]. White v. Cabot Corp., 194 So. 2d 499, 1967 Miss. LEXIS 1414 (Miss. 1967).

Where both the lessor and lessee requested the mechanic to perform necessary repairs upon the plane, it being agreed that the lessor was to pay for the major repairs and the lessee to pay for the minor repairs, in the absence of any agreement by the mechanic waiving his statutory lien for repairs upon the plane, or by which he contracted to waive his right to enforce a mechanic's lien thereon, the mechanic had a lien upon the airplane for minor repairs made, although such were chargeable to the lessee. Taylor v. Elliott, 229 Miss. 530, 91 So. 2d 711, 1956 Miss. LEXIS 636 (Miss. 1956).

Service station operator is not entitled to lien under this section [Code 1942, § 353] on an automobile for accessories which were sold in regular course of business and where no labor was both performed and charged for in the installation of such accessories in the repairing of the automobile. Eastex Finance Co. v. Bryant, 207 Miss. 414, 42 So. 2d 418, 1949 Miss. LEXIS 351 (Miss. 1949).

Operator of service station not entitled to lien under this section [Code 1942, § 353] for gas, oil, grease, brake fluid and wash jobs supplied for automobile. Eastex Finance Co. v. Bryant, 207 Miss. 414, 42 So. 2d 418, 1949 Miss. LEXIS 351 (Miss. 1949).

A garageman who repaired a truck at the request of the lessee who was under contractual obligation to keep it in repair was entitled to retain possession of the truck until payment of the repair bill as against one who had purchased the truck from the original lessor. Martin v. Broadhead, 202 Miss. 281, 32 So. 2d 433, 1947 Miss. LEXIS 274 (Miss. 1947).

Where dealer took in automobile on trade with knowledge of outstanding conditional sales contract requiring buyer to keep automobile repaired, and made repairs and later sold automobile and assigned asserted mechanic's lien for repairs to buyer, neither dealer nor buyer, assignee, could claim lien as against conditional vendor, and vendor could recover in replevin. Federal Credit Co. v. Holloman, 165 Miss. 211, 147 So. 485, 1933 Miss. LEXIS 305 (Miss. 1933).

Dealer taking over automobile with knowledge of outstanding conditional sales contract, requiring buyer to keep it in repair, acquired no lien against itself for repairs made by it. Federal Credit Co. v. Holloman, 165 Miss. 211, 147 So. 485, 1933 Miss. LEXIS 305 (Miss. 1933).

One selling tires in usual course of trade and placing them on automobile held not entitled to mechanic's lien on automobile. Hardy v. Watkins, 150 Miss. 861, 117 So. 255, 1928 Miss. LEXIS 173 (Miss. 1928).

Mechanic has no lien on jitney bus for charges for "going after and bringing in the car" in order to repair it. Orr v. Jackson Jitney Car Co., 115 Miss. 140, 75 So. 945, 1917 Miss. LEXIS 193 (Miss. 1917).

4. Surrender of possession.

The holder of a mechanic's lien created by this section [Code 1942, § 353] may not resort to replevin to recover possession of property repaired after having parted with possession. Central Motor Exchange v. Thompson, 236 So. 2d 736, 1970 Miss. LEXIS 1496 (Miss. 1970).

Where machinery and equipment had been in the possession or under the control of one claiming a mechanic's lien while being prepared, and he surrendered possession thereof to the owner, the lien was retained to the extent that is allowed in cases of liens for purchase money of goods, and was enforceable while the property remained in the hands of the owner, or in the hands of one deriving title or possession through the owner, with notice that the indebtedness represented by the mechanic's lien was unpaid. Billups v. Becker's Welding & Machine Co., 186 Miss. 41, 189 So. 526, 1939 Miss. LEXIS 219 (Miss. 1939).

5. Priority of liens.

Under Code 1972, § 75-9-310, a repairman's lien acquired under Code 1972, § 85-7-101 for services in repairing plaintiff's tractor while under lease to a third party, would take priority over plaintiff's prior perfected security interest governing the lease, notwithstanding the fact that the third party defaulted on the lease agreement with plaintiff subsequent to the repairman's return of the tractor to the third party, where the third party voluntarily restored possession of the tractor to defendant who thus had a possessory lien; the provisions of Code 1972, §§ 75-9-310 and 85-7-101 manifest an intention that such statutes are to be read and interpreted in pari materia. Thorp Commercial Corp. v. Mississippi Road Supply Co., 348 So. 2d 1016, 1977 Miss. LEXIS 2117 (Miss. 1977).

A mechanic's lien for necessary repairs to an automobile is superior to the lien of a conditional vendor. Mississippi Motor Finance, Inc. v. Thomas, 246 Miss. 14, 149 So. 2d 20, 1963 Miss. LEXIS 411 (Miss. 1963).

Where purchaser of a car under a retained title contract incurred a bill for repairs which was necessary for preservation and the operation of the automobile and to prevent its deterioration, the mechanic was entitled to enforce a mechanic's lien which was superior to the rights of the seller who repossessed the car upon a default on the contract. Commercial Sec. Co. v. Kriner, 53 So. 2d 92 (Miss. 1951).

One who claims his mechanic's lien on motor truck for its repair is superior to lien retained for unpaid purchase price has burden of establishing that labor and materials furnished constitute repairs, as distinguished from articles purchased for truck or fuel to enable it to operate, and that such repairs were reasonably necessary to preserve truck and permit its ordinary operation and prevent deterioration. Funchess v. Pennington, 205 Miss. 500, 39 So. 2d 1, 1949 Miss. LEXIS 447 (Miss. 1949).

Mechanic's and materialman's lien for labor performed and materials furnished in connection with installations of fixed machinery and equipment to prepare manufacturing plant for operation has priority over lien of deed of trust executed after mechanic acquired his lien in compliance with prior agreement to secure note by deed of trust on after acquired property in nature of machinery and equipment to be acquired and used in manufacturing business. Buckwalter v. McElroy, 205 Miss. 54, 38 So. 2d 317, 1949 Miss. LEXIS 411 (Miss. 1949).

Where one, who had made repairs to a truck, intervened in an action by subsequent repairmen against the conditional vendee of the truck to recover for their labor and to impress a lien upon the truck, and, the truck having been condemned to be sold to pay for all the repairs, took an assignment of the subsequent repairmen's lien and their interest in the judgment and then purchased the truck at the sale thereunder, thereby acquiring the vendee's title, which was the ownership of the truck subject to the lien of the conditional sales contract, the mechanic's liens were not merged into the judgment, but remained in effect as against the vendor's assignee, and the asignee was entitled to dispossess the holder of the mechanic's liens only when it had paid him what the purchaser of the truck owed him, if anything, for the repairs to it. General Motors Acceptance Corp. v. Shoemake, 192 Miss. 446, 6 So. 2d 309, 1942 Miss. LEXIS 32 (Miss. 1942).

With respect to the priority as between a mechanic's lien claimant and the holder of a deed of trust, the presumption would be that the owner of the property informed the beneficiary in the deed of trust of the existence of such mechanic's lien, since it would have been unlawful for the owner to have obtained the loan and to have given a lien in favor of the beneficiary in such deed of trust without advising her of the existence of any lien then outstanding against the property. Billups v. Becker's Welding & Machine Co., 186 Miss. 41, 189 So. 526, 1939 Miss. LEXIS 219 (Miss. 1939).

As to a claimed mechanic's lien for indebtedness incurred prior to the execution of a deed of trust, the burden of proof was upon the beneficiary of the deed of trust to show that she acquired her lien without notice of the mechanic's lien created by this section [Code 1942, § 353]; and to support the affirmative defense of lack of knowledge, it was not sufficient merely to show that the attorney of such beneficiary, who negotiated the loan, made a diligent inquiry and investigation and failed to acquire any notice or knowledge of the existence of the mechanic's lien. Billups v. Becker's Welding & Machine Co., 186 Miss. 41, 189 So. 526, 1939 Miss. LEXIS 219 (Miss. 1939).

As to items of labor done and material furnished subsequent to the execution of a deed of trust on the property in question, the mechanic's lien would be paramount to the lien of the deed of trust where it was shown that the labor done and materials furnished were necessary to permit the operation and to prevent the deterioration of the property. Billups v. Becker's Welding & Machine Co., 186 Miss. 41, 189 So. 526, 1939 Miss. LEXIS 219 (Miss. 1939).

Lien on motortruck for repairs necessary for operation thereof and to prevent its deterioration, made at request of assignee of buyer of truck on conditional sales contract under which seller retained title, held superior to seller's lien notwithstanding mechanic's knowledge of seller's lien, since repairs were impliedly authorized by seller. De Van Motor Co. v. Bailey, 177 Miss. 441, 171 So. 342, 1936 Miss. LEXIS 279 (Miss. 1936).

Repair lien on automobile inferior to rights of a seller with title retained, unless repair shown reasonably necessary to preserve property and permit its operation. Moorhead Motor Co. v. H. D. Walker Auto Co., 133 Miss. 63, 97 So. 486, 1923 Miss. LEXIS 114 (Miss. 1923).

6. Liability.

Fact that conditional seller of motortruck, who had retained title, impliedly authorized repair so as to render truck subject to repairman's lien, did not create relation of debtor and creditor between repairman and conditional seller so as to render seller personally liable for repairs. De Van Motor Co. v. Bailey, 177 Miss. 441, 171 So. 342, 1936 Miss. LEXIS 279 (Miss. 1936).

Conditional seller of motortruck who retained title is not liable in case of a deficiency for repairs on truck made at instance of conditional buyer or his assignee, since liability of seller extends no further than the property. De Van Motor Co. v. Bailey, 177 Miss. 441, 171 So. 342, 1936 Miss. LEXIS 279 (Miss. 1936).

7. Actions to enforce liens.

Repair company was not entitled to summary judgment on its mechanic's lien claim under Miss. Code Ann. § 85-7-101, for the labor and material to repair an excavator, because there were genuine issues of material facts in dispute, as the reasonableness or necessity of the repairs was not addressed. Caterpillar Fin. Servs. Corp. v. Burroughs Diesel, Inc., 125 So. 3d 659, 2013 Miss. App. LEXIS 175 (Miss. Ct. App.), cert. denied, 125 So. 3d 658, 2013 Miss. LEXIS 586 (Miss. 2013).

The holder of a statutory mechanic's lien who has parted with possession of that property can only enforce his lien in the manner and form that a purchase money lien may be enforced and cannot resort to replevin. Central Motor Exchange v. Thompson, 236 So. 2d 736, 1970 Miss. LEXIS 1496 (Miss. 1970).

Assignee of note and deed of trust covering machinery and equipment in manufacturing plant who files suit in chancery court for foreclosure of deed of trust, for appointment of receiver, for adjudication of priorities of liens and moves to abate prior action filed by mechanic to enforce his lien, must abide by equities of case resulting from fact that mechanic's lien had been created in favor of mechanic without notice of existence of prior executed note containing agreement to subsequently give deed of trust on same property to which mechanic's lien attached. Buckwalter v. McElroy, 205 Miss. 54, 38 So. 2d 317, 1949 Miss. LEXIS 411 (Miss. 1949).

In proceeding to enforce repairman's lien on motortruck wherein conditional seller of truck appeared claiming the truck, interest of both mechanic and seller of truck should be ascertained. De Van Motor Co. v. Bailey, 177 Miss. 441, 171 So. 342, 1936 Miss. LEXIS 279 (Miss. 1936).

Suit to enforce lien on automobile is an action in rem. West Point Motor Car Co. v. McGhee, 122 Miss. 604, 84 So. 690, 1920 Miss. LEXIS 458 (Miss. 1920).

Materialman could not recover against owner of building for materials furnished contractor in the erection thereof where petition did not aver that owner was obligated to pay for such material and did not charge that at the time notice was given the owner was indebted to the contractor. Smith v. Frank Gardener Hardware & Supply Co., 83 Miss. 654, 36 So. 9, 1903 Miss. LEXIS 87 (Miss. 1903).

8. Judgment.

Plaintiff securing mechanic's lien in justice court and judgment for debt may, on appeal, take judgment on appeal bond without establishing lien. Dudley v. Waltman, 156 Miss. 483, 126 So. 1, 1930 Miss. LEXIS 168 (Miss. 1930).

RESEARCH REFERENCES

ALR.

Priority as between lien for repairs and the like, and right of seller under conditional sales contract. 36 A.L.R.2d 198.

Priority as between artisans' lien and chattel mortgage. 36 A.L.R.2d 229.

Municipal property as subject to mechanic's lien. 51 A.L.R.3d 657.

Labor in examination, repair, or servicing of fixtures, machinery, or attachments in building, as supporting a mechanics' lien, or as extending time for filing such a lien. 51 A.L.R.3d 1087.

Assertion of statutory mechanic's or materialman's lien against oil and gas produced or against proceeds attributable to oil and gas sold. 59 A.L.R.3d 278.

Garagemen's lien: modern view as to validity of statute permitting sale of vehicle without hearing. 64 A.L.R.3d 814.

Enforceability of single mechanic's lien upon several parcels against less than the entire property liened. 68 A.L.R.3d 1300.

Demand for or submission to arbitration as affecting enforcement of mechanics' lien. 73 A.L.R.3d 1042.

Filing of mechanics' lien or proceeding for its enforcement as affecting right to arbitration. 73 A.L.R.3d 1066.

Removal or demolition of building or other structure as basis for mechanics' lien. 74 A.L.R.3d 386.

Vacation and sick pay and other fringe benefits as within mechanic's lien statute. 20 A.L.R.4th 1268.

Am. Jur.

53 Am. Jur. 2d, Mechanics' Liens §§ 1, 2, 22 et seq.

12A Am. Jur. Legal Forms 2d, Mechanics Liens §§ 173:1 et seq.

§ 85-7-103. Stable keepers; lien on animals.

The owner of every livery stable, sale stable, feed stable or public pasture shall have a lien on every horse, mule, cow, or other animal for the price of feeding, grooming, training, grazing, or keeping the same, at the instance of the owner of the animal, and shall have the right to retain possession of the animal until such price be paid. If the price be not paid in ten (10) days after it is due, the person to whom it is owing may commence suit therefor before a justice of the peace where the principal of the amount does not exceed Two Hundred Dollars ($200.00), and in the circuit court where it exceeds that sum, setting forth the amount of the debt, how it accrued, and a description of the animal; and, upon proof of the debt that it is due for feeding, grooming, training, grazing or keeping the animal, he shall be entitled to judgment against the owner for the amount due and sued for and the price of feeding, grooming, training, grazing and keeping the animal since the institution of the suit if the whole amount do not exceed the jurisdiction of the court, with costs as in other cases, and to a special order and execution for the sale of the property upon which the lien exists for the payment of such judgment and costs, and to an execution, as in other cases, for the residue of what remains unpaid after sale of the property. The lien created by this section shall be subordinate to any prior encumbrance on such animal of which the owner of the stable had notice, actual or constructive, unless the animal were fed, groomed, trained, grazed or kept by the consent of the encumbrancer.

HISTORY: Codes, 1892, § 2722; 1906, § 3082; Hemingway's 1917, § 2442; 1930, § 2256; 1942, § 354; Laws, 1888, p. 94; Laws, 1934, ch. 311.

Editor's Notes — Pursuant to Miss. Const. Art. 6, § 171, all references in the Mississippi Code to justice of the peace shall mean justice court judge.

§ 85-7-105. Remedy where lienholder loses possession to owner.

If the lienholders mentioned in Sections 85-7-101 and 85-7-103 part with possession of the property, they shall retain their liens while the property remains in the hands of the owner, or one deriving title or possession through him, with notice that the price of the labor and materials or the price of feeding, grooming, training, grazing or keeping the same was unpaid, and may enforce the same in like manner as is provided in Sections 85-7-31 and 85-7-53.

HISTORY: Codes, 1880, § 1383; 1892, § 2715; 1906, § 3075; Hemingway's 1917, § 2435; 1930, § 2257; 1942, § 355; Laws, 1968, ch. 303, § 1, eff from and after passage (approved August 6, 1968).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Priority of liens.
3. Enforcement of liens.

1. In general.

The surrender of a truck by a garage man does not result in the garage man losing his lien thereon, except as against one deriving title or possession through the owner. Boydstun v. Cook & Co., 238 Miss. 324, 118 So. 2d 354, 1960 Miss. LEXIS 408 (Miss. 1960).

Where a purchaser of a car under a retained title contract incurred a bill for repairs which was necessary for preservation and the operation of the automobile and to prevent its deterioration, the mechanic was entitled to enforce a mechanic's lien which was superior to the rights of the seller who repossessed the car upon a default on the contract. Commercial Sec. Co. v. Kriner, 53 So. 2d 92 (Miss. 1951).

A garageman surrendering possession of a repaired truck to its owner without collecting his repair charges did not lose his lien as against the holder of a deed of trust embracing the truck where there had been no breach of condition or foreclosure of the deed of trust. Watson v. Broadhead, 203 Miss. 142, 33 So. 2d 302, 1948 Miss. LEXIS 241 (Miss. 1948).

Where machinery and equipment had been in the possession or under the control of one claiming a mechanic's lien while being repaired, and he surrendered possession thereof to the owner, the lien was retained to the extent that is allowed in cases of liens for purchase money of goods, and was enforceable while the property remained in the hands of the owner, or in the hands of one deriving title or possession through the owner, with notice that the indebtedness represented by the mechanic's lien was unpaid. Billups v. Becker's Welding & Machine Co., 186 Miss. 41, 189 So. 526, 1939 Miss. LEXIS 219 (Miss. 1939).

2. Priority of liens.

Lien on motortruck for repairs necessary for operation thereof and to prevent its deterioration, made at request of assignee of buyer of truck on conditional sales contract under which seller retained title, was superior to seller's lien notwithstanding surrender of possession and mechanic's knowledge of seller's lien, since repairs under such circumstances were impliedly authorized by seller. De Van Motor Co. v. Bailey, 177 Miss. 441, 171 So. 342, 1936 Miss. LEXIS 279 (Miss. 1936).

3. Enforcement of liens.

The holder of a statutory mechanic's lien who has parted with possession of that property can only enforce his lien in the manner and form that a purchase money lien may be enforced and cannot resort to replevin. Central Motor Exchange v. Thompson, 236 So. 2d 736, 1970 Miss. LEXIS 1496 (Miss. 1970).

In proceeding to enforce repairman's lien on motortruck wherein conditional seller of truck appeared claiming the truck, interest of both mechanic and seller of truck should be ascertained. De Van Motor Co. v. Bailey, 177 Miss. 441, 171 So. 342, 1936 Miss. LEXIS 279 (Miss. 1936).

Fact that conditional seller of motortruck, who had retained title, impliedly authorized repair so as to render truck subject to repairman's lien, did not create relation of debtor and creditor between repairman and conditional seller so as to render seller personally liable for repairs. De Van Motor Co. v. Bailey, 177 Miss. 441, 171 So. 342, 1936 Miss. LEXIS 279 (Miss. 1936).

Conditional seller of motortruck who retained title is not liable in case of a deficiency for repairs on truck made at instance of conditional buyer or his assignee, since liability of seller extends no further than the property. De Van Motor Co. v. Bailey, 177 Miss. 441, 171 So. 342, 1936 Miss. LEXIS 279 (Miss. 1936).

RESEARCH REFERENCES

ALR.

Demand for or submission to arbitration as affecting enforcement of mechanics' lien. 73 A.L.R.3d 1042.

Removal or demolition of building or other structure as basis for mechanics' lien. 74 A.L.R.3d 386.

Mortgagee-lender's duty, in disbursing funds, to protect mortgagor against outstanding or potential mechanics' liens against the mortgaged property. 30 A.L.R.4th 134.

§ 85-7-107. Lien on motor vehicle for labor and materials used in constructing, manufacturing or repairing vehicle; notice to legal owner and holder of any lien; judgment on lien; redemption; sale of vehicle.

All motor vehicles repaired for any person, and at his instance, shall be liable for the price of the labor and material employed in constructing, manufacturing or repairing the same; and the mechanic to whom the price of said labor and material may be due shall have the right to retain possession of such motor vehicles so repaired until the price be paid. If such price shall not be paid within thirty (30) days, and the person to whom such charges are payable and owing intends to commence suit as provided in this section, such person shall notify, by certified mail, the legal owner and the holder of any lien of the amount of charges due thereon and provide an opportunity for redemption. If such property has not been redeemed within five (5) days after the mailing of such certified letter, the person to whom such charges are payable and owing may commence suit in any court of competent jurisdiction, and upon proof of the value of the labor and materials employed in such repairs, manufacture or construction, and that such labor and materials furnished were reasonably necessary to prevent deterioration, permit operation and preserve the property, shall be entitled to judgment against the party for whom such labor was done or materials furnished, with costs, as in other cases, and to a special order for the sale of the property retained in his possession for the payment thereof, with costs, and to an execution, as in other cases, for the residue of what remains unpaid after sale of the property. The proceeds of the sale of such property in excess of the amount needed to pay the judgment and necessary expenses of the procedure required by this section shall be held by the person for a period of six (6) months, and if not reclaimed by the owner thereof within that time shall become the property of the county and be paid over to the chancery clerk of the county in which the sale was held to be deposited into the county general fund, subject however to any rights of recorded lienholders.

HISTORY: Laws, 1988, ch. 542, § 1; Laws, 2005, ch. 331, § 1, eff from and after July 1, 2005.

Cross References — Mississippi Motor Vehicle Title Law, see § 63-21-1, et seq.

Lien on all carriages, buggies, wagons, plows, or any article constructed, manufactured or repaired for labor and materials, see § 85-7-101.

JUDICIAL DECISIONS

ANALYSIS

1. Construction with other law.
2. Defenses.

1. Construction with other law.

Defendants were properly convicted of armed robbery (Miss. Code Ann. § 97-3-79) for taking a car from the victim's repair shop at gunpoint; although one defendant had legal title to the car, the victim had the right of possession of the car through his mechanic's lien under Miss. Code Ann. § 85-7-107. Veazy v. State, 113 So. 3d 1226, 2013 Miss. LEXIS 72 (Miss. 2013).

The mechanic's lien statute limits recovery to the costs of labor and materials, unlike Miss. Code Ann. § 85-7-251, which governs liens available for towing and storing motor vehicles. Allstate Ins. Co. v. Green, 794 So. 2d 170, 2001 Miss. LEXIS 159 (Miss. 2001).

2. Defenses.

Where a defendant seeking to set aside a default judgment had a colorable defense to a claim asserted under the mechanic's lien statute, since the car at issue had never been titled in Mississippi, the trial court erred in not setting aside the default judgment. Allstate Ins. Co. v. Green, 794 So. 2d 170, 2001 Miss. LEXIS 159 (Miss. 2001).

RESEARCH REFERENCES

ALR.

Loss of garageman's lien on repaired vehicle by owner's use of vehicle. 74 A.L.R.4th 90.

Am. Jur.

12A Am. Jur. Legal Forms 2d, Mechanics Liens §§ 173:1 et seq.

ARTICLE 7.

OWNER'S LIEN FOR RENT ON PERSONAL PROPERTY IN SELF-STORAGE FACILITY.

Sec.
85-7-121. Definitions.
85-7-123. Owner's lien for rent on personal property in self-storage facility; denial of entry by owner to occupant in default; late fees; election by occupant to receive notice by electronic mail.

Sec.	
85-7-125.	Enforcement of owner's lien.
85-7-127.	Satisfaction of lien; sale of property.
85-7-129.	Application of Sections 85-7-121 through 85-7-129 to rental agreements entered into on or after July 1, 1988.

§ 85-7-121. Definitions.

As used in Sections 85-7-121 through 85-7-129, the following terms shall have the meaning ascribed to them herein, unless the context clearly requires otherwise:

(a) "Default" means the failure timely to perform any obligation or duty set forth in Sections 85-7-121 through 85-7-129 or the rental agreement;

(b) "Electronic mail" means an electronic message or an executable program or computer file that contains an image of a message that is transmitted between two (2) or more computers or electronic terminals and includes electronic messages that are transmitted within or between computer networks;

(c) "Last known address" means the postal address or electronic mail provided by the occupant in the latest rental agreement or the postal address or electronic mail provided by the occupant in a subsequent written notice of a change of address;

(d) "Late fee" means any fee or charge assessed for an occupant's failure to pay rent when due. Late fee does not include interest on a debt; expenses incurred in the collection of unpaid rent; expenses necessary for preservation of personal property or expenses reasonably incurred in its sale or other disposition pursuant to Sections 85-7-121 through 85-7-129; or costs associated with the enforcement of any other remedy provided by law or contract;

(e) "Leased space" means the individual storage space at the self-storage facility which is leased or rented to an occupant pursuant to a rental agreement;

(f) "Occupant" means a person, his sublessee, successor or assign entitled to the use of a leased space at a self-storage facility under a rental agreement to the exclusion of others;

(g) "Owner" means the owner, operator, lessor or sublessor of a self-storage facility, an agent or any person authorized to manage the facility or to receive rent from an occupant under a rental agreement. The term "owner" shall not be construed to mean a warehouseman unless the owner issues a warehouse receipt, bill of lading or other document of title for the personal property stored;

(h) "Personal property" means movable property not affixed to land and includes, but is not limited to, goods, wares, merchandise, watercraft, motor vehicles and household items;

(i) "Rental agreement" means any written agreement or lease that establishes or modifies the terms, conditions, rules or any other provisions concerning the use and occupancy of leased space at a self-storage facility;

(j) "Sale" means a public or private sale that is conducted at the self-storage facility, another suitable location selected by the owner, or on a publicly accessible website that conducts lien sales or personal property sales. The personal property at a sale may be offered as a unit or in parcels.

(k) "Self-storage facility" means any real property used for the purpose of renting or leasing individual storage space to occupants who are to have access to such space for the purpose of occupants themselves storing and removing personal property on "self-service basis"; provided, however, that an occupant may not use a leased space for residential purposes;

(*l*) "Verified mail" means any method of mailing offered by the United States Postal Service or private delivery service that provides evidence of the mailing.

HISTORY: Laws, 1988, ch. 595, § 1, eff from and after July 1, 1988; Laws, 2020, ch. 353, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment added (b), (d), (j) and (*l*), and redesignated former (b) as (c), former (c) through (g) as (e) through (i), and former (h) as (k); in (a), substituted "or the rental agreement" for "and the rental agreement"; in (c), inserted "postal" and "or electronic mail" both times they appear; in (i), inserted "leased space at"; and made minor stylistic changes.

§ 85-7-123. Owner's lien for rent on personal property in self-storage facility; denial of entry by owner to occupant in default; late fees; election by occupant to receive notice by electronic mail.

(1) The owner has a lien upon all personal property located at a self-storage facility for rent, late fees, labor or other charges, present or future, in relation to the personal property and for expenses necessary for its preservation or expenses reasonably incurred in its sale or other disposition pursuant to Sections 85-7-121 through 85-7-129. The lien provided for in this section is superior to any other lien or security interest except those which are perfected and recorded in Mississippi prior to the date of default under the rental agreement and except any tax lien as otherwise provided by law. The lien attaches as of the date the personal property is placed in the leased space and the rental agreement shall contain a statement in bold type notifying the occupant of the existence of the lien and that the property stored in the leased space may be sold to satisfy the lien if the occupant is in default. If the rental agreement specifies a limit on the value of personal property that the occupant may store in the leased space, the limit shall be deemed to be the maximum value of the personal property in the leased space of the occupant.

(2) If the occupant is in default, the owner may deny the occupant access to the leased space at the self-storage facility.

(3) The rental agreement may provide for a reasonable late fee for failure of the occupant to timely make payments for the leased space when due. A monthly late fee of no more than Twenty Dollars ($20.00) or twenty percent (20%) of the monthly rental amount, whichever is greater, shall be considered reasonable and is not a penalty.

(4) If the owner offers notice by electronic mail, the occupant may elect to

receive notice by electronic mail only by indicating the election in the rental agreement.

HISTORY: Laws, 1988, ch. 595, § 2, eff from and after July 1, 1988; Laws, 2020, ch. 353, § 2, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment designated the formerly undesignated paragraph as (1) and therein inserted "late fees" in the first sentence and added the last sentence; and added (2) through (4).

§ 85-7-125. Enforcement of owner's lien.

The enforcement of the owner's lien against an occupant who is in default shall be in accordance with the following:

(a) No enforcement action shall be taken by the owner, other than denial of access, as provided for in the rental agreement until the occupant has been in default continuously for a period of fourteen (14) days.

(b) During the default period the occupant shall be notified in writing. The notice shall be delivered in person or sent by verified or electronic mail to the last known address of the occupant. Notices shall be deemed delivered when deposited in the United States mail, with a private delivery service with postage paid or when an electronic message is sent to the last known address provided by the occupant. If the owner receives an automated message that the electronic mail cannot be delivered, the owner shall deliver the notice in person or send the notice by verified mail. The notice shall include an itemized statement of the owner's claim showing the sum due at the time of the notice, the date when the sum became due and any other sums that shall accrue. The notice shall also include a demand for payment of the sum due within a specified time not less than fourteen (14) days after the date of the notice, a statement that the contents of the occupant's lease space are subject to the owner's lien, the name, street address and telephone number of the owner, or his designated agent, whom the occupant may contact to respond to the notice, a conspicuous statement that unless the claim is paid within the time stated, the personal property will be advertised for public or private sale or will be otherwise disposed of at a specified time and place.

(c) After the expiration of the time given in the owner's notice, the owner shall publish advertisement of the sale to the highest bidder in any commercially reasonable manner. The manner of advertisement is deemed commercially reasonable if it is likely to attract at least three (3) independent bidders to attend or view the sale in person or online at the time and place advertised. The notice shall include the address of the self-storage facility where the personal property is located, and the name of the occupant, and the time, place and manner of the sale.

(d) A sale to the highest bidder shall take place not sooner than fifteen (15) days after the publication.

(e) If no one purchases the property at the sale and if the owner has complied with the foregoing procedures, the owner may otherwise dispose of the property.

HISTORY: Laws, 1988, ch. 595, § 3, eff from and after July 1, 1988; Laws, 2020, ch. 353, § 3, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (b), substituted "sent by verified or electronic mail" for "sent by United States certified mail, return receipt requested" in the first sentence, rewrote the second sentence, which read: "Notices shall be deemed delivered when deposited in the United States mail with postage paid," and added the third sentence; in (c), rewrote the first sentence, which read: "After the expiration of the time given in the owner's notice, the owner shall publish, in legal notices, advertisement of the sale to the highest bidder in a newspaper of general circulation where the self-storage facility is located," and added the second sentence; in (d), deleted the last sentence, which read: "If there is no newspaper of general circulation in the county in which the self-storage facility is located, the advertisement shall be posted at least ten (10) days before the date of the sale and in not less than six (6) conspicuous places in the neighborhood where the self-storage facility is located"; and in (e), deleted the last sentence, which read: "Any sale or disposition of the personal property shall be held at the self-storage facility or at the nearest suitable place to the place the personal property is held or stored."

§ 85-7-127. Satisfaction of lien; sale of property.

(1) Before any sale or other disposition of personal property pursuant to Sections 85-7-121 through 85-7-129, the occupant may pay the amount necessary to satisfy the owner's lien and the reasonable expenses incurred under Sections 85-7-121 through 85-7-129, and thereby redeem the personal property. Upon the payment and satisfaction of the amount necessary to satisfy the lien and the reasonable expenses incurred under Sections 85-7-121 through 85-7-129, the owner shall return the personal property and thereafter the owner shall have no liability to any person with respect to such personal property. Unless the rental agreement specifically provides otherwise and until a sale under Sections 85-7-121 through 85-7-129, the exclusive care, custody and control of all personal property stored in the leased space remains vested in the occupant.

(2) The owner may buy at any sale of personal property to enforce the owner's lien.

(3) A purchaser in good faith of the personal property sold to satisfy the owner's lien takes the property free of any rights of persons against whom the lien was valid, despite noncompliance by the owner with the requirements of this section.

(4) In the event of a sale under Sections 85-7-121 through 85-7-129, the owner may satisfy his lien from the proceeds of the sale but shall hold the balance, if any, for delivery on demand to the occupant. In no event shall the owner's liability exceed the proceeds of the sale. If the occupant does not claim the balance of the proceeds within one (1) year of the date of the sale, such balance shall be deemed to be abandoned and the owner shall pay such balance to the Treasurer of the State of Mississippi, in accordance with the Uniform Disposition of Unclaimed Property Act.

(5)(a) If the personal property subject to the owner's lien is a vehicle, watercraft, or trailer and rent or other charges remain unpaid for sixty (60) days, the owner may have the vehicle, watercraft, or trailer towed from the self-storage facility. This removal shall not release the owner's lien. The owner shall not be liable for any damages to the vehicle, watercraft, or trailer once the tower takes possession of the property.

(b) Not less than ten days before having personal property towed pursuant to this section, an owner shall notify the occupant by regular mail or electronic mail at the occupant's last known address and shall include the name, address, and telephone number of the tower and the owner or his designated agent.

(6) Nothing in this article shall be construed as in any manner impairing or affecting the right of parties to create additional rights, duties, and obligations in and by virtue of a rental agreement. In addition to the rights and remedies set forth in this article, the owner has the same rights of and remedies available to a creditor or landlord.

HISTORY: Laws, 1988, ch. 595, § 4, eff from and after July 1, 1988; Laws, 2020, ch. 353, § 4, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (1), inserted "and the reasonable expenses incurred under Sections 85-7-121 through 85-7-129" in the first sentence, and in the last sentence, deleted "lien" preceding "sale under" and "self-storage" preceding "space remains vested"; in (4), substituted "in accordance with the Uniform Disposition of Unclaimed Property Act" for "who shall deposit such funds into the General Fund"; and added (5) and (6).

§ 85-7-129. Application of Sections 85-7-121 through 85-7-129 to rental agreements entered into on or after July 1, 1988.

The provisions of Sections 85-7-121 through 85-7-129 shall apply only to rental agreements entered into on or after July 1, 1988. Rental agreements entered into prior to July 1, 1988, shall remain valid.

HISTORY: Laws, 1988, ch. 595, § 5, eff from and after July 1, 1988.

ARTICLE 9.

WATER, OIL AND GAS WELLS.

Sec.
85-7-131. Liens on water, oil or gas wells; effect as to purchasers, etc., without notice.
85-7-132. Lien to enforce violations related to oil and gas production.
85-7-133. Chancery clerk to keep record of liens.
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Sec.	
85-7-153.	Execution.
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§ 85-7-131. Liens on water, oil or gas wells; effect as to purchasers, etc., without notice.

Every water well or oil and gas well, and any fixed machinery, gearing or other fixture that may or may not be used or connected therewith, shall be liable for services or construction and the debt shall be a lien thereon. As to oil and gas wells, the operator thereof shall have a lien upon the interest of each nonoperator owner of an interest in the mineral leasehold estate for the nonoperator's proportionate part of the labor, material and services rendered by the operator or for the operator's account on behalf of each nonoperator in the drilling, completion, recompletion, reworking or other operations of the oil and gas well. If the structure is a water well, the lien shall extend only to all pumps, pipes, equipment therein and all water well appurtenances. If the structure is an oil or gas well, the lien shall extend to the nonoperator's interest in the mineral estate and the fixtures and equipment in the producing unit assigned to the well by the State Oil and Gas Board. The lien shall take effect, as to purchasers or encumbrancers for a valuable consideration without notice thereof, only from the time of commencing suit to enforce the lien, or from the time of filing the contract under which the lien arose, or notice thereof, in the office of the clerk of the chancery court, as hereinafter stated; delivery of material to the job is prima facie evidence of its use therein, and use of water from a water well is prima facie evidence of acceptability of the well. In the case of oil and gas wells, the lien shall take effect, as to purchasers or encumbrancers for a valuable consideration without notice thereof, only from the time of filing notice of the lien as provided by Section 85-7-133.

HISTORY: Codes, Hutchinson's 1848, ch. 45, art. 6 (1); 1857, ch. 39, art. 1; 1871, § 1603; 1880, § 1378; 1892, § 2698; 1906, § 3058; Hemingway's 1917, § 2418; 1930, § 2258; 1942, § 356; Laws, 1926, ch. 150; Laws, 1928, ch. 137; Laws, 1962, ch. 488, §§ 1, 2; Laws, 1964, ch. 291; Laws, 1979, ch. 379; Laws, 2010, ch. 372, § 1; Laws, 2014, ch. 487, § 18, eff from and after passage (approved Apr. 11, 2014).

Cross References — Arbitration of controversies arising out of construction contracts and related agreements, and failure of arbitration to effect liens, see § 11-15-101.

Creation of lien, see § 85-7-261.

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JUDICIAL DECISIONS

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I. Generally.

1. In general.

Lien arising automatically under Mississippi construction statute was statutory lien, not judicial lien subject to avoidance as impairing Chapter 7 debtors' homestead exemption, though creditor could not enforce lien without filing action, and creditor filed enforcement action and obtained judgment prepetition; judgment did not transform statutory lien into judgment lien. In re Wiltcher, 204 B.R. 488, 1996 Bankr. LEXIS 1747 (Bankr. S.D. Miss. 1996).

Construction lender has no duty of reasonable diligence in disbursing to owner proceeds of construction loan, such that materialmen might recover from lender for losses caused thereby; materialmen hold lien against property only to extent that they have brought themselves within terms of statute; and, automatic stay incident to filing of petition in bankruptcy does not prohibit materialman from filing notice of its lien under statute. Riley Bldg. Supplies, Inc. v. First Citizens Nat'l Bank, 510 So. 2d 506, 1987 Miss. LEXIS 2626 (Miss. 1987).

Construction lien perfected under § 85-7-131 by filing of notice with chancery clerk remains valid through federal bankruptcy proceedings. In re Simmons, 765 F.2d 547, 1985 U.S. App. LEXIS 20573 (5th Cir. Miss. 1985).

A suit to establish a materialman's lien may be combined with a suit for a personal judgment as an alternative in the declaration; and in such case the declaration need not set forth the allegations in separate counts. Evans v. Central Service & Supply Co., 226 So. 2d 616, 1969 Miss. LEXIS 1308, 1969 Miss. LEXIS 1309 (Miss. 1969).

To obtain a materialman's statutory lien, statutory prerequisites must be strictly complied with. Jones Supply Co. v. Ishee, 249 Miss. 515, 163 So. 2d 470, 1964 Miss. LEXIS 412 (Miss. 1964).

The legislature intended that a lien under this section [Code 1942, § 356] should not be limited to a single lot if the curtilage included more than one lot. Vinson v. Cooley, 54 So. 2d 750 (Miss. 1951).

A mechanic's lien is unknown either at law or in equity and exists only by statute and can be enforced only as the statute provides. Pincus v. Collins, 198 Miss. 283, 22 So. 2d 361, 1945 Miss. LEXIS 194 (Miss. 1945).

Mechanic's lien statute does not prevent the creation of a contract lien in the nature of a mortgage to cover in the price under a mechanic's or materialman's contract. Pincus v. Collins, 198 Miss. 283, 22 So. 2d 361, 1945 Miss. LEXIS 194 (Miss. 1945).

2. Contract—necessity and sufficiency of.

Plaintiffs contended and defendant agreed that because defendant failed to have both plaintiffs, as tenants by the entirety, execute the construction contract, the lien did not attach to the property as a means of securing the debt owed only by one plaintiff to defendant, but the other plaintiff's alleged knowledge and consent to work being done on property she owned might amount to authorization, regardless of whether or not she was a signatory to the contract, and summary judgment was inappropriate at this stage. Ward v. McCammon (In re Ward), 2014 Bankr. LEXIS 1200 (Bankr. N.D. Miss. Mar. 28, 2014).

Workmen made a prima facie case of lien under § 85-7-131, requiring defendants to go forward with proof to overcome such showing, where the building owners authorized the lessee of the building to arrange for work to be done on the building, where the lease specifically required that such work be done, and where the lessee authorized a franchisor to act in this regard with the building owner's full awareness of such fact. Graham v. Pugh, 417 So. 2d 536, 1982 Miss. LEXIS 2027 (Miss. 1982).

The testimony of materialmen that a property owner had verbally agreed to pay for materials sold by them to a contractor who abandoned construction of a home for the owner prior to its completion was insufficient, in the face of the owner's denial, to entitle them to a lien upon her property. Phillips v. F. G. & H. Millwork Mfg. Co., 190 So. 2d 843, 1966 Miss. LEXIS 1399 (Miss. 1966).

Contract whereby contractor who constructed a house retained a lien thereon until he had been paid in full created a contract lien in the nature of a mortgage and not merely a mechanic's lien, since the law would put in the mechanic's lien without a contract provision to that effect. Pincus v. Collins, 198 Miss. 283, 22 So. 2d 361, 1945 Miss. LEXIS 194 (Miss. 1945).

All liens are created by law or by contract, and to establish a lien the contract must be made by the owner of the property upon which a lien is sought to be impressed. Hollis & Ray v. Isbell, 124 Miss. 799, 87 So. 273, 1921 Miss. LEXIS 180 (Miss. 1921).

The contract may be express or implied. Hollis & Ray v. Isbell, 124 Miss. 799, 87 So. 273, 1921 Miss. LEXIS 180 (Miss. 1921).

It is not necessary to the validity of the lien that the contract be in writing. Harrison v. Breeden, 8 Miss. 670, 1843 Miss. LEXIS 137 (Miss. 1843).

3. —Contract, assignment of.

Builder's contract may be assigned before service of statutory notice on owner, and assignee thereof will be entitled to proceeds thereof notwithstanding that materialmen and subcontractors had furnished materials and labor which had not been paid for. Dleta Lumber Co. v. Greenwood Bank & Trust Co., 123 Miss. 772, 86 So. 590, 1920 Miss. LEXIS 79 (Miss. 1920).

4. Attachment of lien.

The seller of a gas heating and cooking plant under a contract providing that it should remain personal property cannot waive such provision by an action to impress a lien on the building in which the plant is placed, since he has no right to waive the provision without the consent of the owners of the realty, it being a mutually beneficial provision, and greatly to the interest of the owner that no lien exist on the realty. Mississippi Butane Gas System Co. v. Glisson, 194 Miss. 457, 10 So. 2d 358, 1942 Miss. LEXIS 164 (Miss. 1942).

Owner employing contractor is not liable to materialman and laborers, unless indebted to contractor when notified of claims. Citzens' Lumber Co. v. Netterville, 137 Miss. 310, 102 So. 178, 1924 Miss. LEXIS 215 (Miss. 1924).

Owner taking possession of unfinished house did not thereby accept contractor's work and become liable therefor. Robinson v. De Long, 118 Miss. 280, 79 So. 95, 1918 Miss. LEXIS 74 (Miss. 1918).

Wife contracting with husband for erection of a building on her separate property and paying him therefor, is liable for materials furnished and a lien may be established against her property. Banks & Co. v. Pullen, 113 Miss. 632, 74 So. 424, 1917 Miss. LEXIS 134 (Miss. 1917).

Owner who employed mechanic to furnish material and improve house is not, nor is the house, liable to third party materialmen seeking to enforce the lien of this section [Code 1942, § 356], unless indebted to mechanic when notified, and credited with any sum paid or agreed to be paid for materials to others before such notice. Lake v. Brannin, 90 Miss. 737, 44 So. 65, 1907 Miss. LEXIS 107 (Miss. 1907).

Installation of a plant for generating electric light on a steamboat gives rise to the lien. Mulholland v. Thompson-Houston Electric Co., 66 Miss. 339, 6 So. 211, 1899 Miss. LEXIS 104 (Miss. 1899).

Attaching gas fixtures to a building to be used therein gives rise to the lien. Joseph Baum & Co. v. Covert, 62 Miss. 113, 1884 Miss. LEXIS 31 (Miss. 1884).

5. Property subject to lien.

Where the owner of a service station did not consent either expressly or impliedly to the erection of the awning at the service station, the seller could not enforce lien on the building or on the land. Jay Industries, Inc. v. Powell, 220 Miss. 372, 71 So. 2d 193, 1954 Miss. LEXIS 449 (Miss. 1954).

Where the lessor if not expressly, at least impliedly, authorized the lessee to repair the existing building and to construct a new one and therefore make a contract for that purpose with the lumber company, the lumber company acquired a lien on the building for such repair and construction and under this section [Code 1942, § 356] such lien extends to and covers the entire lot on which the buildings stand and the entire curtilage thereto belonging. Burwell v. Planters Lumber Co., 220 Miss. 79, 70 So. 2d 71, 1954 Miss. LEXIS 411 (Miss. 1954).

Mechanic's lien claimant was without right to any claim against proceeds of fire insurance on building, in the absence of contract to insure for his benefit. Federal Land Bank v. Thames Lumber & Supply Co., 160 Miss. 335, 134 So. 154, 1931 Miss. LEXIS 188 (Miss. 1931), overruled, Evans v. Central Service & Supply Co., 226 So. 2d 616, 1969 Miss. LEXIS 1308, 1969 Miss. LEXIS 1309 (Miss. 1969).

Mechanic's lien claimant who, in a petition seeking to enforce lien, did not properly select acre of rural land on which house stood, was not entitled to lien against land. Federal Land Bank v. Thames Lumber & Supply Co., 160 Miss. 335, 134 So. 154, 1931 Miss. LEXIS 188 (Miss. 1931), overruled, Evans v. Central Service & Supply Co., 226 So. 2d 616, 1969 Miss. LEXIS 1308, 1969 Miss. LEXIS 1309 (Miss. 1969).

Lien herein cannot be enforced against agricultural high school building of county. McKinnon v. Gowan Bros., 127 Miss. 545, 90 So. 243, 1921 Miss. LEXIS 256 (Miss. 1921).

No lien for labor and material furnished can attach to a state building, and, therefore, funds in hands of state agents for payment of contractor cannot be applied on claims for such labor and material unless authorized by the contract. United States Fidelity & Guaranty Co. v. Marathon Lumber Co., 119 Miss. 802, 81 So. 492, 1919 Miss. LEXIS 49 (Miss. 1919).

Public buildings are not included in the statute. Board of Supervisors v. Gillen, 59 Miss. 198, 1881 Miss. LEXIS 101 (Miss. 1881).

6. Persons entitled to lien.

Construction liens placed by a mortgagor on his property after the property had been foreclosed were invalid under Miss. Code Ann. §§ 85-7-131 and 85-7-135 [repealed] because any repairs made by the mortgagor were made without authorization or knowledge of the purchaser at foreclosure. Pepper v. Homesales, Inc., 2009 U.S. Dist. LEXIS 16692 (S.D. Miss. Mar. 3, 2009).

A plaintiff who fails to establish ownership of property against which a lien is sought in the defendants is not entitled to a lien thereon. Evans v. Central Service & Supply Co., 226 So. 2d 616, 1969 Miss. LEXIS 1308, 1969 Miss. LEXIS 1309 (Miss. 1969).

A construction mortgagee who did not use reasonable diligence to see that funds advanced were used to pay materialmen and laborers, and whose advances were repaid out of a loan obtained from a mortgagee without notice of the unpaid bills, takes an assignment of the latter mortgage subject to the claims of materialmen. Southern Life Ins. Co. v. Pollard Appliance Co., 247 Miss. 211, 150 So. 2d 416, 1963 Miss. LEXIS 294 (Miss. 1963).

Materialman advancing money to a contractor to meet the contractor's payroll, in addition to material furnished, in the construction of filling stations, could not, as against the owner contracting for such stations, be considered as furnishing labor, since he was not a party to the contract between the owner and the contractor, and the contractor was not, therefore, the materialman's agent in the procurement of the labor. City Coal & Lumber Co. v. Gulf Refining Co., 184 Miss. 260, 185 So. 250, 1938 Miss. LEXIS 319 (Miss. 1938).

Builder under cost plus contract under which he agreed to supervise erection of building and to furnish and pay for all labor and materials held entitled to lien for expenditures and commission. Williams & Williams v. Warren, 134 Miss. 899, 99 So. 266, 1924 Miss. LEXIS 297 (Miss. 1924).

7. Notice.

Knowledge that a house is newly built and that the owner is behind in his payments to claimant is not the equivalent of actual notice of the claim of a materialman. Jones Supply Co. v. Ishee, 249 Miss. 515, 163 So. 2d 470, 1964 Miss. LEXIS 412 (Miss. 1964).

A bona fide purchaser or mortgagee obtains, under this section [Code 1942, § 356], an encumbrance superior to claims of materialmen and laborers unless it has actual notice thereof, knowledge of such facts as would put it on inquiry, or constructive notice by the lienors having filed their contracts or lis pendens notices of their liens. Southern Life Ins. Co. v. Pollard Appliance Co., 247 Miss. 211, 150 So. 2d 416, 1963 Miss. LEXIS 294 (Miss. 1963).

Where a construction contract between owner of premises and prime contractor did not require that the owner pay anything before the completion of the project, the owner may make payments to the prime contractor during progress of the work and he will not be held liable as to payments to subcontractors and materialmen who give statutory stop notice subsequent to making of payment. Williams v. Taylor, 216 Miss. 563, 62 So. 2d 883, 1953 Miss. LEXIS 669 (Miss. 1953).

A writ of seizure of the property is an essential step in the enforcement in rem of a mechanic's lien against personal property when it is out of the possession of the person entitled to the lien; and the mere filing of a suit and of an ordinary summons to a defendant does not operate as constructive notice to subsequent purchasers under the general common-law doctrine of lis pendens. Hamilton Bros. Co. v. Baxter, 188 Miss. 610, 195 So. 335, 1940 Miss. LEXIS 50 (Miss. 1940).

Notice that building was in course of construction was not sufficient notice to bank advancing money to owner secured by deed of trust of materialman's rights under unrecorded contract, it being incumbent upon materialman either to file its contract for record, or to institute proceedings to enforce its lien, or to give notice in some manner. Walker v. Macon Creamery Co., 165 Miss. 121, 146 So. 442, 1933 Miss. LEXIS 284 (Miss. 1933).

Lis pendens notice of mechanic's lien must be given to affect bona fide purchasers of realty without notice. McKenzie v. Fellows, 97 Miss. 31, 52 So. 628, 1910 Miss. LEXIS 253 (Miss. 1910).

8. Enforcement of lien.

Subcontractor's claim under the statute failed as a matter of law because recovery required the subcontractor to prove it was in a contractual relationship with a hotel owner or the general contractor, something it did not prove and could not prove based on its lack of a certificate of responsibility voiding any contract. Ground Control, LLC v. Capsco Indus., 214 So. 3d 232, 2017 Miss. LEXIS 93 (Miss. 2017).

A lien against the debtor's home, which arose from the furnishing of labor to construct that home, was a statutory lien which could not be avoided in bankruptcy. In re Mitchell, 276 B.R. 142, 2001 Bankr. LEXIS 223 (Bankr. N.D. Miss. 2001).

A construction lien filed by paving company was enforceable against owner of property where there was sufficient evidence to establish that the general contractor was an implied agent acting within apparent authority granted by the owner when contracting with paving company. Bailey v. Worton, 752 So. 2d 470, 1999 Miss. App. LEXIS 707 (Miss. Ct. App. 1999).

In a laborers' and materialmen's lien on real property against the bank which held the mortgage on the property, the lienholder was entitled to judgment against the bank for the sum owed to him where the bank had foreclosed on the property after the filing of the construction lien and the initiation of the instant action and where, at the time of the foreclosure, the bank had full knowledge of the lien and the action. Self v. Nelson, 402 So. 2d 822, 1981 Miss. LEXIS 2126 (Miss. 1981).

A suit to enforce a materialman's lien created by § 85-7-131 was subject to the statute of limitations provided by § 85-7-141. Further, the running of this one-year limitation period was suspended following the commencement of bankruptcy proceedings and did not commence to run again until the property at issue had been formally abandoned by order of the bankruptcy court. Home Bldg. Mart, Inc. v. Parker, 370 So. 2d 916, 1979 Miss. LEXIS 2011 (Miss. 1979).

Where the original lessee had assigned its leasehold interest to another, who in turn rented to a person who incurred a debt upon which a mechanic's lien was attempted to be enforced, the original lessee was not a necessary and indispensable party to the suit. Jay Industries, Inc. v. Powell, 220 Miss. 372, 71 So. 2d 193, 1954 Miss. LEXIS 449 (Miss. 1954).

The owner of the leasehold interest upon which a mechanic's lien is sought to be enforced is a necessary party to the suit. Jay Industries, Inc. v. Powell, 220 Miss. 372, 71 So. 2d 193, 1954 Miss. LEXIS 449 (Miss. 1954).

Where the claimant commenced his suit in circuit court within twelve months after the money became due and payable to enforce a mechanic's and a materialman's lien and recovered a judgment establishing the lien, and then started a second suit after twelve months had expired for the purpose of having such judgment declared a prior lien to lien claimed under a deed of trust, the circuit court judgment on which relief was sought in the chancery court on the second suit, was not barred by the limitation until seven years after its rendition. Vinson v. Cooley, 54 So. 2d 750 (Miss. 1951).

When in a suit for a mechanic's and materialman's lien on heating equipment installed on hotel premises the contract was not recorded, and no notice of lis pendens was given nor writ of seizure of the property issued, and the property was claimed by the grantee of the realty from a purchaser at foreclosure of a prior deed of trust as a purchaser for value without notice of the unpaid lien, the burden was on such grantee to prove that he was a purchaser for value without notice, and in the absence of such proof, the lien claimant was entitled to recover. Hamilton Bros. Co. v. Baxter, 188 Miss. 610, 195 So. 335, 1940 Miss. LEXIS 50 (Miss. 1940).

There is no requirement that a suit to enforce a materialman's lien as against personal property shall be filed within twelve months next after the time when the money becomes due as is necessary when the suit affects real property as such. Hamilton Bros. Co. v. Baxter, 188 Miss. 610, 195 So. 335, 1940 Miss. LEXIS 50 (Miss. 1940).

Plaintiff may not be compelled to elect on which count he will stand in proceeding to enforce mechanic's lien, where count for personal judgment is joined with count on lien. Williams & Williams v. Warren, 134 Miss. 899, 99 So. 266, 1924 Miss. LEXIS 297 (Miss. 1924).

Petition to enforce lien is not amendable 12 months after cause of action arose. Dodds v. Cavett, 133 Miss. 470, 97 So. 813, 1923 Miss. LEXIS 159 (Miss. 1923).

9. Judgment.

Where the contract for the sale of a gas heating and cooking plant provided that the equipment should remain the property of the seller as security for its payment and that it should remain personal property, the seller waived whatever lien it might otherwise have had on the lot and buildings in which the equipment was installed. Mississippi Butane Gas System Co. v. Glisson, 194 Miss. 457, 10 So. 2d 358, 1942 Miss. LEXIS 164 (Miss. 1942).

Interest on sums due laborers and materialmen by contractor follows as a necessary incident thereto, though bond guaranteeing performance of the contract does not expressly provide therefor. United States Fidelity & Guaranty Co. v. Parsons, 154 Miss. 587, 122 So. 544, 1929 Miss. LEXIS 156 (Miss. 1929).

If the petition for the enforcement of a materialman's lien, under this section [Code 1942, § 356], fails to state a cause of action against the owner, the judgment against him is void and its execution may be enjoined. Smith v. Frank Gardener Hardware & Supply Co., 83 Miss. 654, 36 So. 9, 1903 Miss. LEXIS 87 (Miss. 1903).

The statutory lien of mechanics and materialmen given under this section [Code 1942, § 356] is not waived by merely taking additional security not inconsistent therewith. Parberry v. N. B. Johnson & Co., 51 Miss. 291, 1875 Miss. LEXIS 44 (Miss. 1875); Smith & Vaile Co. v. Butts, 72 Miss. 269, 16 So. 242, 1894 Miss. LEXIS 70 (Miss. 1894).

10. Assignment of lien.

The lien given by the statute is assignable independently of statutory authorization. Kerr v. Moore, 54 Miss. 286, 1876 Miss. LEXIS 32 (Miss. 1876).

11. Waiver of lien.

Materialman's lien is not waived by taking of notes to secure amount of indebtedness. Bullock v. Hans, 208 Miss. 41, 43 So. 2d 670, 1949 Miss. LEXIS 405 (Miss. 1949).

II. Priority of Liens.

12. Generally.

When a construction money lender foreclosed its deed of trust on a shopping center and purchased the property at the trustee's sale, it took title pendente lite, subject to the contingency that laborers' and materialmen's liens were valid, where the laborers and materialmen had filed their claims more than six months before the trustee's sale was advertised, and where the materialmen and laborers brought suit to enforce their liens one day before the sale and filed notice of the suit on the lis pendens record; as between the lender and the landowners, who filed suit to enforce their liens and filed a lis pendens notice two days before the trustee's sale, the lender took title subject to the outcome of the landowners' suit and could not defeat their claim by foreclosing its deed of trust. Guaranty Mortg. Co. v. Seitz, 367 So. 2d 438, 1979 Miss. LEXIS 2202 (Miss. 1979).

In an action to determine the priority between a mechanic's lien and first and second deeds of trust, the mechanic's lien asserted by a contractor, who had repaired a fixture on the premises, was subordinate to the first deed of trust on the property, where the owner of that deed of trust did not consent in writing to the alteration or repair of the fixture, but had priority over the rights of purchasers of a trustee's deed which foreclosed a second deed of trust, where the purchasers of that deed bought the property at foreclosure of the second deed with notice of the lien's existence. Ziller v. Atkins Motel Co., 244 So. 2d 409, 1971 Miss. LEXIS 1334 (Miss. 1971).

Under this section [Code 1942, § 356] a mechanic's lien is valid without the necessity of reduction to judgment. Geo. H. Jett Drilling Co. v. Tibbits, 230 F. Supp. 58, 1964 U.S. Dist. LEXIS 8462 (W.D. La. 1964).

In suit to enforce materialmen's lien in which holders of deed of trust claimed priority on ground that at time he took deed of trust no suit had been commenced to enforce materialmen's lien, no notice of lien had been filed of record and he had no actual notice, issue of actual notice is properly submitted to jury for its determination under proper instructions from court. Bullock v. Hans, 208 Miss. 41, 43 So. 2d 670, 1949 Miss. LEXIS 405 (Miss. 1949).

Bank advancing money to owner secured by deed of trust held entitled to priority over claim of materialman whose lien was not recorded, and who did not bring suit to enforce lien until after recording of deed of trust. Walker v. Macon Creamery Co., 165 Miss. 121, 146 So. 442, 1933 Miss. LEXIS 284 (Miss. 1933).

Mechanic's lien for new buildings erected superior to prior encumbrance, but not to a subsequent lien without notice. Big Three Lumber Co. v. Curtis, 130 Miss. 74, 93 So. 487, 1922 Miss. LEXIS 188 (Miss. 1922).

Where a mechanic repairs property on which there exists a prior lien which he knows exists, his lien for repairs will be subject to the prior lien, unless the facts show a waiver by the prior lienholder, or an implied contract to subordinate his lien to that of the mechanic. Hollis & Ray v. Isbell, 124 Miss. 799, 87 So. 273, 1921 Miss. LEXIS 180 (Miss. 1921).

Where a suit, begun in due time, to enforce a lien on machinery under this section [Code 1942, § 356], is dismissed on demurrer, and plaintiff appeals and obtains a reversal, one who purchases the property under a trust deed given by the defendant takes it subject to the lien, although he buys in good faith and without notice that the appeal was taken. Smith & Vaile Co. v. Burns, 72 Miss. 966, 18 So. 483, 1895 Miss. LEXIS 67 (Miss. 1895).

13. Federal tax liens.

A mechanic's lien is not entitled to priority over a lien for federal income taxes. Geo. H. Jett Drilling Co. v. Tibbits, 230 F. Supp. 58, 1964 U.S. Dist. LEXIS 8462 (W.D. La. 1964).

14. Mortgages.

A lender advancing funds for a construction loan was entitled to a superior lien over mechanics' and materialmen's liens only to the extent that the lender used reasonable diligence in disbursing the construction loan and only in the amount that went into the construction of the project. Guaranty Mortg. Co. v. Seitz, 367 So. 2d 438, 1979 Miss. LEXIS 2202 (Miss. 1979).

A lender advancing construction funds and using reasonable diligence to see that these funds are actually used in payment for materials or other cost of construction has preference over materialmen and laborers who had failed to give notice of their claims to the mortgagee. Wortman & Mann, Inc. v. Frierson Bldg. Supply Co., 184 So. 2d 857, 1966 Miss. LEXIS 1484 (Miss. 1966).

A construction mortgagee has preference over materialmen and laborers only to the extent that its funds actually go into the construction. Southern Life Ins. Co. v. Pollard Appliance Co., 247 Miss. 211, 150 So. 2d 416, 1963 Miss. LEXIS 294 (Miss. 1963).

Mortgagee who makes loan to mortgagor to enable him to purchase land and materials and lumber for the construction of houses thereon and turns money over to mortgagor as he asks for it, knowing that houses are being constructed, but doing nothing to see that such construction is being paid for, has preference over materialmen only to extent that its funds actually go into the construction, when mortgagor fails to use all money advanced by mortgagee for payment of those furnishing materials; such mortgagee should advance proceeds with reasonable diligence in order that holders of statutory liens may not be unjustly defeated in their claims. First Nat'l Bank v. Virden, 208 Miss. 679, 45 So. 2d 268, 1950 Miss. LEXIS 285 (Miss. 1950).

Assignee of mortgagee held entitled to priority over judgment lien of materialman filing petition against mortgagor to enforce lien against house prior to execution of trust deed, where materialman failed to file lis pendens notice and there was no written contract on file, in absence of knowledge by mortgagee of proceedings. Swift & Co. v. Everett, 171 Miss. 410, 157 So. 476, 1934 Miss. LEXIS 241 (Miss. 1934).

Trust deed to secure future advances held prior to mechanics' liens arising during course of construction of building only to extent money secured was used in paying for construction. Weiss, Dreyfous & Seiferth, Inc. v. Natchez Inv. Co., 166 Miss. 253, 140 So. 736, 1932 Miss. LEXIS 302 (Miss. 1932).

15. Liens encompassing equipment or machinery.

The seller of a gas heating and cooking plant, installed in a house under a contract whereby title was to remain in the seller as security for payment and was to remain personal property, could not impress a lien against the house and lot, as against the beneficial owner of a prior trust deed on the house, where it was shown that the seller had actual and constructive notice of such deed, and it was not shown that the installation of the plant was necessary to the enjoyment, use or preservation of the house. Mississippi Butane Gas System Co. v. Glisson, 194 Miss. 457, 10 So. 2d 358, 1942 Miss. LEXIS 164 (Miss. 1942).

In materialman's lien case, evidence established that motors and other machinery installed in cottonseed warehouse became part of building and freehold, and, therefore, subject to recorded trust deed, and where mortgagee purchased property at foreclosure sale, he had paramount lien which ripened into ownership as against materialmen's lien claimant, mortgagor, and his purchaser. M. L. Virden Lumber Co. v. Sherrod, 167 Miss. 297, 139 So. 813, 1932 Miss. LEXIS 192 (Miss.), modified, 142 So. 508 (Miss. 1932).

Deed of trust covering land and ginning machinery and "equipment" did not include seed house constructed on leased railroad right of way so as to take precedence over lien of materialman who furnished materials for construction of such seed house without notice of any claim thereto under the deed of trust. Y. D. Lumber Co. v. Refuge Cotton Oil Co., 153 Miss. 302, 120 So. 447, 1929 Miss. LEXIS 11 (Miss. 1929).

16. Waiver or estoppel.

When it is shown that the petitioner has a laborer's lien or materialman's lien upon property constructed or repaired, those who claim to have superior liens as purchasers or encumbrances for a valuable consideration without notice must specifically and affirmatively plead their lien; the burden of proof is upon one who claims to be an encumbrancer for value without notice, and he must show facts which will bring such claim within the exceptions set out in Code 1942, § 356. Enterprise Plumbing Co. v. Bailey Mortg. Co., 209 So. 2d 825, 1968 Miss. LEXIS 1474 (Miss. 1968).

17. Pleadings; burden of proof.

Mortgagee purchasing at foreclosure sale was bound by waiver in pleadings in favor of materialman's lien claimant of paramount position, if any. M. L. Virden Lumber Co. v. Sherrod, 167 Miss. 297, 139 So. 813, 1932 Miss. LEXIS 192 (Miss.), modified, 142 So. 508 (Miss. 1932).

Materialman held estopped by silence from claiming priority of lien for extras over lien of mortgage of bank lending money with understanding it would have first lien. Planters' Lumber Co. v. Griffin Chapel M.E. Church, 157 Miss. 714, 128 So. 76 (1930).

Where a mechanic repairs property on which there exists a prior lien which he knows exists, his lien for repairs will be subject to the prior lien, unless the facts show a waiver by the prior lienholder, or an implied contract to subordinate his lien to that of the mechanic. Hollis & Ray v. Isbell, 124 Miss. 799, 87 So. 273, 1921 Miss. LEXIS 180 (Miss. 1921).

RESEARCH REFERENCES

ALR.

Right to mechanic's lien as for "labor" or "work," in case of preparatory or fabricating work done on materials intended for use and used in particular building or structure. 25 A.L.R.2d 1370.

Sufficiency of notice, claim, or statement of mechanic's lien with respect to nature of work. 27 A.L.R.2d 1169.

Mechanic's lien for grading, clearing, filling, landscaping, excavating, and the like. 39 A.L.R.2d 866.

Right to mechanic's lien upon leasehold for supplying labor or material in attaching or installing fixtures. 42 A.L.R.2d 685.

Validity and effect of contract provision against mechanic's lien. 76 A.L.R.2d 1087.

Amendment of statement of claim of mechanic's lien as to designation of property owner. 81 A.L.R.2d 681.

Swimming pool as lienable item within mechanic's lien statute. 95 A.L.R.2d 1371.

Charge for use of machinery, tools, or appliances used in construction as basis for mechanics' lien. 3 A.L.R.3d 573.

Labor in examination, repair, or servicing of fixtures, machinery, or attachments in building, as supporting a mechanics' lien, or as extending time for filing such a lien. 51 A.L.R.3d 1087.

Assertion of statutory mechanic's or materialman's lien against oil and gas produced or against proceeds attributable to oil and gas sold. 59 A.L.R.3d 278.

Enforceability of mechanic's lien attached to leasehold estate against landlord's fee. 74 A.L.R.3d 330.

Removal or demolition of building or other structure as basis for mechanics' lien. 74 A.L.R.3d 386.

Release or waiver of mechanic's lien by general contractor as affecting rights of subcontractor or materialman. 75 A.L.R.3d 505.

Who is the "owner" within mechanic's lien statute requiring notice of claim. 76 A.L.R.3d 605.

Mortgagee-lender's duty, in disbursing funds, to protect mortgagor against outstanding or potential mechanics' liens against the mortgaged property. 30 A.L.R.4th 134.

Delivery of material to building site as sustaining mechanic's lien-modern cases. 32 A.L.R.4th 1130.

Liability of purchaser of real estate on mechanic's lien based on goods or labor supplied to vendor but filed after title passed. 33 A.L.R.4th 1017.

Landlord's liability to third party for repairs authorized by tenant. 46 A.L.R.5th 1.

Am. Jur.

53 Am. Jur. 2d, Mechanics' Liens §§ 65 et seq.

17 Am. Jur. Pl & Pr Forms (Rev), Mechanics' Liens, Forms 1 et seq.

12A Am. Jur. Legal Forms 2d, Mechanics' Liens §§ 173:9 et seq. (establishment of mechanics' liens).

12A Am. Jur. Legal Forms 2d, Mechanics' Liens §§ 173:57 et seq. (waiver, discharge, subordination, and assignment of mechanics' liens).

CJS.

56 C.J.S., Mechanics' Liens §§ 68 et seq.

Law Reviews.

The Effect of Bankruptcy and Encumbrances on Mineral Interests in Mississippi. 53 Miss. L. J. 551, December, 1983.

§ 85-7-132. Lien to enforce violations related to oil and gas production.

Every building, well or structure of any kind, and any fixed machinery, gearing or other fixture that may or may not be used or connected therewith, and all fixtures and equipment in the producing unit assigned such well by the Oil and Gas Board shall be liable for any penalty, civil fine or other expense arising from the violation of any statute of this state with respect to the conservation of oil and gas, or any provision of Sections 53-1-1 through 53-1-47 and Sections 53-3-1 through 53-3-21, or any rule, regulation or order made by the board thereunder. The Oil and Gas Board may use the provisions of this chapter to enforce any such lien. The Oil and Gas Board shall perfect such lien in the county or counties where the property or equipment involved in the violation is located. Such lien shall take effect as to purchasers or encumbrancers for a valuable consideration without notice thereof only from the time of filing notice of such lien as provided by Section 85-7-133.

HISTORY: Laws, 1997, ch. 482, § 1, eff from and after passage (approved March 27, 1997).

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. 2d, Gas and Oil § 124 et seq.

§ 85-7-133. Chancery clerk to keep record of liens.

Each of the several chancery clerks of this state shall provide in his office, as a part of the land records of his county, a record entitled "Notice of Liens" wherein notices under Section 85-7-131 shall be filed and recorded, and the liens shall not take effect until some notation of the lien is filed and recorded in the record showing a description of the property involved, the name of the lienor or lienors, the date of filing, if and where suit is filed, and if and where contract is filed or recorded.

HISTORY: Codes, Hutchinson's 1848, ch. 45, art. 6 (1); 1857, ch. 39, art. 1; 1871, § 1603; 1880, § 1378; 1892, § 2698; 1906, § 3058; Hemingway's 1917, § 2418; 1930, § 2258; 1942, § 356; Laws, 1926, ch. 150; Laws, 1928, ch. 137; Laws, 1962, ch. 488,

§§ 1, 2; Laws, 1964, ch. 291; Laws, 1994, ch. 521, § 39; Laws, 2014, ch. 487, § 19, eff from and after passage (approved Apr. 11, 2014).

Cross References — Duties of clerk of chancery court to keep records, see § 9-5-137.

JUDICIAL DECISIONS

1. In general.

In an action by the purchaser of a house for damages against the builder, the trial court erred in sustaining the builder's demurrer to one count of the complaint charging it with falsely filing a materialmen's lien in 1977 against the property without providing notice to the purchaser as required by § 85-7-197 [repealed] where the claim was not barred by the one-year statute of limitations set out in § 85-7-201 [repealed] since the suit had been filed in 1979 within a month after the purchaser first became aware of the lien. The fact that the notice of lien was listed in the "Notice of Construction Liens" book established by § 85-7-133, rather than on the lis pendens docket established by by § 85-7-197 [repealed], did not excuse the builder from the notice requirement of the latter statute. Hicks v. Greenville Lumber Co., 387 So. 2d 94, 1980 Miss. LEXIS 2056 (Miss. 1980).

RESEARCH REFERENCES

ALR.

Landlord's liability to third party for repairs authorized by tenant. 46 A.L.R.5th 1.

§§ 85-7-135 through 85-7-139. Repealed.

Repealed by Laws, 2014, ch. 487, § 24, effective from and after passage April 11, 2014.

§ 85-7-135. [Codes, 1857, ch. 39, art. 2; 1871, § 1604; 1880, § 1379; 1892, § 2699; 1906, § 3059; Hemingway's 1917, § 2419; 1930, § 2259; 1942, § 357; Laws, 1926, ch. 150; Laws, 2010, ch. 372, § 2, eff from and after July 1, 2010.]

§ 85-7-137. [Codes, 1857, ch. 39, art. 3; 1871, § 1605; 1880, § 1380; 1892, § 2700; 1906, § 3060; Hemingway's 1917, § 2420; 1930, § 2260; 1942, § 358.]

§ 85-7-139. [Codes, 1857, ch. 39, art. 5; 1871, § 1607; 1880, § 1382; 1892, § 2701; 1906, § 3061; Hemingway's 1917, § 2421; 1930, § 2261; 1942, § 359.]

Editor's Notes — Former § 85-7-135 provided that liens under § 85-7-131 (as it appeared prior to the 2014 amendment) exist only in favor of the contractor or an employee.

Former § 85-7-137 provided a lien for construction, alteration or repair of any house or building that was done at the instance of a person not the owner of the property attached only to the house or building and the estate of the person who is not the owner of the property. For present similar provisions, see § 85-7-411.

Former § 85-7-139 provided that a written contract for the construction or repair of a house or building could be recorded.

JUDICIAL DECISIONS

1. In general.

Construction liens placed by a mortgagor on his property after the property had been foreclosed were invalid under

Miss. Code Ann. §§ 85-7-131 and 85-7-135 [repealed] because any repairs made by the mortgagor were made without authorization or knowledge of the purchaser at foreclosure. Pepper v. Homesales, Inc., 2009 U.S. Dist. LEXIS 16692 (S.D. Miss. Mar. 3, 2009).

A lumber contractor who made home improvements with the owners' knowledge and consent but without their written permission was entitled to a lien to cover the cost of improvements for which the price had not been paid only to the extent that the improvements could be removed without damaging the owners' interest in the house where an oral construction contract was negotiated with the daughter of the owners who, although she lived in the house and made payments to her parents equivalent to mortgage payments, was neither the beneficiary of a resulting trust in the house nor the vendee of an enforceable contract of sale, and thus, had no interest in the house to which the lien could attach. Brown v. Gravlee Lumber Co., 341 So. 2d 907, 1977 Miss. LEXIS 2282 (Miss. 1977).

Where the lessor if not expressly, at least impliedly, authorized the lessee to repair the existing building and to construct a new one and therefore make a contract for that purpose with the lumber company, the lumber company acquired a lien on the building for such repair and construction and under this section [Code 1942, § 357] such lien extends to and covers the entire lot on which the buildings stand and the entire curtilage thereto belonging. Burwell v. Planters Lumber Co., 220 Miss. 79, 70 So. 2d 71, 1954 Miss. LEXIS 411 (Miss. 1954).

Where bank which owned golf course agreed to lease it in consideration of lessee's deposit of money with bank which money was to be withdrawn by lessee in payment of repairs, and subsequently on lessee's failure to deposit money bank agreed to accept repairs in lieu of money, laborers and materialmen who contracted with lessee to make repairs and improvements held not entitled to recover from bank for such repairs, where there was no obligation on part of bank express or implied to pay claims. Wenger v. First Nat'l Bank, 174 Miss. 311, 164 So. 229, 1935 Miss. LEXIS 71 (Miss. 1935).

Laborers under the contractor have no lien and cannot impose on the owner any higher duty or further payment than he by his contract has imposed on himself. Herrin v. Warren & Mobley, 61 Miss. 509, 1894 Miss. LEXIS 60 (Miss. 1894); Wenger v. First Nat'l Bank, 174 Miss. 311, 164 So. 229, 1935 Miss. LEXIS 71 (Miss. 1935).

RESEARCH REFERENCES

ALR.

Release or waiver of mechanic's lien by general contractor as affecting right of subcontractor or materialman. 75 A.L.R.3d 505.

Landlord's liability to third party for repairs authorized by tenant. 46 A.L.R.5th 1.

Am. Jur.

53 Am. Jur. 2d, Mechanics' Liens §§ 65 et seq.

CJS.

56 C.J.S., Mechanics' Liens §§ 72 et seq.

§ 85-7-141. Commencement of suit to enforce lien.

Any person entitled to and desiring to have the benefit of a lien under Section 85-7-131 shall commence his suit in the circuit or county court of the county in which the property or some part thereof is situated, if the principal of his demand exceeds Two Hundred Dollars ($200.00), within twelve (12) months next after the time when the money due and claimed by the suit became due and payable following the day on which the last of the labor was performed or material or rental or lease equipment was supplied by the person bringing the action, and not after; and the suit shall be commenced by petition, describing with reasonable certainty the property upon which the lien is averred to exist, and setting out the nature of the contract and indebtedness, and the amount thereof; and the plaintiff shall file therewith in all cases, except where the whole work or materials, or both, were furnished in pursuance of a written contract for an aggregate price, a bill of particulars exhibiting the amount and kind of labor performed, and of materials furnished, and the prices at which and times when the same were performed and furnished; and such suits shall be docketed and conducted as other suits in that court, and may be tried at the first term.

HISTORY: Codes, Hutchinson's 1848, ch. 45, art. 7 (3); 1857, ch. 39, art. 6; 1871, § 1609; 1880, § 1384; 1892, § 2702; 1906, § 3062; Hemingway's 1917, § 2422; 1930, § 2262; 1942, § 360; Laws, 1904, ch. 152; Laws, 2011, ch. 457, § 1; Laws, 2014, ch. 487, § 20, eff from and after passage (approved Apr. 11, 2014).

Cross References — Replevin, attachment, and lien proceedings before justices of the peace, see § 11-9-135.

Right of action on bond, see § 85-7-187.

Landlord's lien, see §§ 89-7-23 et seq.

Seizure of property about to be removed by guardian, see § 93-13-65.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
2. Construction and application.
3. Actions in general.
4. Pleadings.
5. —Amendment.
6. Judgment.
7. Limitations.

1. Validity.

The statute is constitutional. Richardson v. Warwick, 8 Miss. 131, 1843 Miss. LEXIS 67 (Miss. 1843).

2. Construction and application.

That the circuit court is the proper situs for suits to enforce a lien does not mean that a chancellor has no jurisdiction to restrain a private person's efforts to hold himself out as possessing such a lien. Cummings v. Davis, 751 So. 2d 1055, 1999 Miss. App. LEXIS 374 (Miss. Ct. App. 1999).

Lien arising automatically under Mississippi construction statute was statutory lien, not judicial lien subject to avoidance as impairing Chapter 7 debtors' homestead exemption, though creditor could not enforce lien without filing action, and creditor filed enforcement action and obtained judgment prepetition; judgment did not transform statutory lien into judgment lien. In re Wiltcher, 204 B.R. 488, 1996 Bankr. LEXIS 1747 (Bankr. S.D. Miss. 1996).

In view of the provisions of Code 1942, § 360, actions brought in the chancery court to enforce laborers' and materialmen's liens were properly transferred by the chancellor to the circuit court, and an interlocutory appeal from the order of transfer should not have been granted. West v. Mechanical Services, Inc., 216 So. 2d 174, 1968 Miss. LEXIS 1223 (Miss. 1968).

In a suit under oral contract to recover balance for construction of a porch, there was proof that contractor did not substantially perform the contract, therefore the contractor could not recover on the contract or on quantum meruit, and it was not necessary to file a counterclaim or recoupment. Jackson v. Caffey, 223 Miss. 368, 78 So. 2d 361, 1955 Miss. LEXIS 389 (Miss. 1955).

In suit on contractor's bond, laborers' and materialmen's rights were not measured by provisions of mechanics' lien statute. Continental Casualty Co. v. Crook, 157 Miss. 518, 128 So. 574, 1930 Miss. LEXIS 329 (Miss. 1930).

Contract between materialmen and owner need not be in writing to impress lien on building into which material went. Delta Lumber Co. v. Wall, 119 Miss. 350, 80 So. 782, 1919 Miss. LEXIS 9 (Miss. 1919).

3. Actions in general.

Motion to remand action to state court was denied, where the defendant railway company had removed the plaintiff construction company's action based on diversity jurisdiction; the construction company's argument that Miss. Code Ann. § 85-7-141 restricted federal diversity jurisdiction over cases that involved the enforcement of construction liens was without merit because states had no power to enlarge or restrict federal jurisdiction. Atlas Railroad Constr. Co. v. Columus & Greenville Railway Co., 190 F. Supp. 2d 908, 2002 U.S. Dist. LEXIS 9288 (N.D. Miss. 2002).

The suit is not commenced until the petition is filed, though a summons is issued. Christian v. O'Neal, 46 Miss. 669, 1872 Miss. LEXIS 36 (Miss. 1872).

4. Pleadings.

A petition fails to show any cause of action whatever against the owner if it contains no averment of his personal liability to the plaintiff or that at the date he was given notice under the section providing therefor, of plaintiff having furnished materials for use in the building which had not been paid for, he was indebted to the contractor. Smith v. Frank Gardener Hardware & Supply Co., 83 Miss. 654, 36 So. 9, 1903 Miss. LEXIS 87 (Miss. 1903).

When a bill of particulars taken in connection with the statements of the petition give as full information of the petitioner's claim as if a specific statement of everything were fully set out in detail, it is sufficient. McLaughlin v. Shaughnessey, 42 Miss. 520, 1869 Miss. LEXIS 27 (Miss. 1869).

5. —Amendment.

A suit to enforce the lien can be amended so as to change it to a suit for debt. Duff v. Snider, 54 Miss. 245, 1876 Miss. LEXIS 26 (Miss. 1876); Noble v. Terrell, 64 Miss. 830, 2 So. 14, 1887 Miss. LEXIS 113 (Miss. 1887).

A suit to enforce the lien may be amended after twelve months from the time the debt became due, so as to set forth more precisely the property covered by the lien; but amendment of suit for debt to suit to enforce lien cannot be done after twelve months from the time the debt became due, as the suit for the debt does not stop the running of the statute against the lien. Dinkins v. Bowers, 49 Miss. 219, 1873 Miss. LEXIS 107 (Miss. 1873).

A suit for the debt may be amended so as to change it to one to enforce the lien. Weathersby v. Sinclair, 43 Miss. 189, 1870 Miss. LEXIS 24 (Miss. 1870).

6. Judgment.

Where the petition wholly fails to state any cause of action against the owner a judgment against him is void and its execution may be enjoined. Smith v. Frank Gardener Hardware & Supply Co., 83 Miss. 654, 36 So. 9, 1903 Miss. LEXIS 87 (Miss. 1903).

Adjudications in a judgment by default in a suit to enforce a mechanic's lien must be limited to matters of right, averred in the petition, and cannot be extended by its prayer. Reid v. Gregory, 78 Miss. 247, 28 So. 835, 1900 Miss. LEXIS 102 (Miss. 1900).

7. Limitations.

Dismissal of a suit seeking to enforce a construction lien was proper as: (1) the original complaint (OC) did not name the real party in interest under Miss. R. Civ. P. 17(a), the current owner (CO) of the building; (2) the prior owner had conveyed the property before the OC was filed; (3) the amended complaint (AC) was time-barred as it was not served on the CO until after the Miss. Code Ann. § 85-7-141 limitations period expired; (4) due to the lack of timely service under Miss. R. Civ. P. 4(h), the AC did not relate back to the OC's filing under Miss. R. Civ. P. 15(c); and (5) the contractor did not show good cause for the delayed service. Welch Roofing & Constr., Inc. v. Farina, 99 So. 3d 274, 2012

Miss. App. LEXIS 639 (Miss. Ct. App. 2012).

A materialman's lien established by the circuit court on the property of the defendant would be set aside where the plaintiff's declaration to establish the lien had been filed in the circuit court approximately 20 months after the indebtedness had become due and payable. Central Grain & Supply Co. v. Jesco, Inc., 410 So. 2d 879, 1982 Miss. LEXIS 1876 (Miss. 1982).

A suit to enforce a materialman's lien created by § 85-7-131 was subject to the statute of limitations provided by § 85-7-141. Further, the running of this one-year limitation period was suspended following the commencement of bankruptcy proceedings and did not commence to run again until the property at issue had been formally abandoned by order of the bankruptcy court. Home Bldg. Mart, Inc. v. Parker, 370 So. 2d 916, 1979 Miss. LEXIS 2011 (Miss. 1979).

Where the defendant filed notice of a materialman's lien but took no other steps to protect its interest until the property owner filed a bill seeking cancellation of the notice more than two years later, its materialman's lien was barred by the 12-month statute of limitations. King v. Hankins, 209 So. 2d 190, 1968 Miss. LEXIS 1444 (Miss. 1968).

The twelve month statute of limitations on liens under this section [Code 1942, § 360] does not apply to a mechanic's and materialmen's lien against principal property. Jay Industries, Inc. v. Powell, 220 Miss. 372, 71 So. 2d 193, 1954 Miss. LEXIS 449 (Miss. 1954).

Parties to a contract have the right to establish the due date of the obligation and the statute of limitation will not begin to run until such due date. Burwell v. Planters Lumber Co., 220 Miss. 79, 70 So. 2d 71, 1954 Miss. LEXIS 411 (Miss. 1954).

Where the claimant commenced his suit in circuit court within twelve months after the money became due and payable to enforce a mechanic's and a materialman's lien and recovered a judgment establishing the lien, and then started a second suit after twelve months had expired for the purpose of having such judgment declared a prior lien to lien claimed under a deed of trust, the circuit court judgment on which relief was sought in the chancery court on the second suit, was not barred by the limitation until seven years after its rendition. Vinson v. Cooley, 54 So. 2d 750 (Miss. 1951).

Contractor's suit to foreclose a lien upon a house, under contract whereby contractor retained a lien until he had been paid in full, instituted more than one year after the last payment had become due, was not barred on theory that the contract merely granted the contractor a mechanic's lien which was barred. Pincus v. Collins, 198 Miss. 283, 22 So. 2d 361, 1945 Miss. LEXIS 194 (Miss. 1945).

There is no requirement that a suit to enforce a materialmen's lien as against personal property shall be filed within twelve months next after the time when the money became due as is necessary when the suit affects real property as such. Hamilton Bros. Co. v. Baxter, 188 Miss. 610, 195 So. 335, 1940 Miss. LEXIS 50 (Miss. 1940).

The holder of a deed of trust on certain personal property and a purchaser of such property from a trustee in bankruptcy, setting up the defense of statute of limitations to the enforcement of a mechanic's lien claimed as to such property, were bound to prove that the due date of the indebtedness claimed by the mechanic's lien claimant was such as to cause the mechanic's lien to be barred by the statute without regard to when the labor was actually done or materials furnished. Billups v. Becker's Welding & Machine Co., 186 Miss. 41, 189 So. 526, 1939 Miss. LEXIS 219 (Miss. 1939).

Filing amended bill within twelve months after due date of note for material tolls statute requiring proceeding for enforcement within twelve months. Eagle Lumber & Supply Co. v. Peyton, 145 Miss. 482, 111 So. 141, 1927 Miss. LEXIS 144 (Miss. 1927).

Where there has been a continuous delivery of material, and the time of payment is not fixed by contract, the statute begins to run against the lien from the delivery of the last lot of material. Ehlers v. Elder, 51 Miss. 495, 1875 Miss. LEXIS 70 (Miss. 1875); O'Leary v. Burns, 53 Miss. 171, 1876 Miss. LEXIS 51 (Miss.

1876); Billups v. Becker's Welding & Machine Co., 186 Miss. 41, 189 So. 526, 1939 Miss. LEXIS 219 (Miss. 1939).

Unless suit to enforce the lien be brought within the time allowed by the statute, the lien will be lost. Jones v. Alexander, 18 Miss. 627, 1848 Miss. LEXIS 150 (Miss. 1848); Dinkins v. Bowers, 49 Miss. 219, 1873 Miss. LEXIS 107 (Miss. 1873); Ehlers v. Elder, 51 Miss. 495, 1875 Miss. LEXIS 70 (Miss. 1875); O'Leary v. Burns, 53 Miss. 171, 1876 Miss. LEXIS 51 (Miss. 1876).

The time for payment of the debt, as fixed by the contract, cannot be postponed by subsequent agreement so as to extend the lien. Jones v. Alexander, 18 Miss. 627, 1848 Miss. LEXIS 150 (Miss. 1848); Ehlers v. Elder, 51 Miss. 495, 1875 Miss. LEXIS 70 (Miss. 1875).

RESEARCH REFERENCES

ALR.

Who is the "owner" within mechanic's lien statute requiring notice of claim. 76 A.L.R.3d 605.

Am. Jur.

51 Am. Jur. 2d, Liens §§ 83 et seq.

53 Am. Jur. 2d, Mechanics' Liens §§ 333 et seq.

17 Am. Jur. Pl & Pr Forms (Rev), Mechanics' Liens, Forms 101 et seq. (enforcement of lien).

CJS.

53 C.J.S., Liens §§ 32 et seq.

56 C.J.S., Mechanics' Liens §§ 296 et seq.

§ 85-7-143. Parties to the suit.

All persons having an interest in the controversy, and all persons claiming liens on the same property, by virtue of Section 85-7-131, shall be made parties to the suit; and should any necessary or proper party be omitted, he may be brought in by amendment, on his own application or that of any other party interested; and claims of several parties having liens on the same property may be joined in the same action.

HISTORY: Codes, 1857, ch. 39, art 7; 1871, § 1610; 1880, § 1385; 1892, § 2703; 1906, § 3063; Hemingway's 1917, § 2423; 1930, § 2263; 1942, § 361; Laws, 2014, ch. 487, § 21, eff from and after passage (approved Apr. 11, 2014).

JUDICIAL DECISIONS

ANALYSIS

1. Necessary and proper parties generally.
2. Intervention by interested person.
3. Scope and effect of judgments.

1. Necessary and proper parties generally.

The conditional seller of an automobile is a necessary party to a proceeding to enforce a mechanic's lien for repairs. Mississippi Motor Finance, Inc. v. Thomas, 246 Miss. 14, 149 So. 2d 20, 1963 Miss. LEXIS 411 (Miss. 1963).

Where the original lessee had assigned its leasehold interest to another, who in turn rented to a person who incurred a debt upon which a mechanic's lien was attempted to be enforced, the original lessee was not a necessary and indispensable party to the suit. Jay Industries, Inc. v. Powell, 220 Miss. 372, 71 So. 2d 193, 1954 Miss. LEXIS 449 (Miss. 1954).

The owner of the leasehold interest upon which a mechanic's lien is sought to be enforced is a necessary party to the suit. Jay Industries, Inc. v. Powell, 220 Miss. 372, 71 So. 2d 193, 1954 Miss. LEXIS 449 (Miss. 1954).

One claiming to be a bona fide holder of deed of trust against real property is proper party, under this section [Code 1942, § 361], to suit to enforce materialmen's lien on same property. Bullock v. Hans, 208 Miss. 41, 43 So. 2d 670, 1949 Miss. LEXIS 405 (Miss. 1949).

Where in suit to enforce a mechanic's lien for labor done on a wrecked automobile, the bill of complaint alleged that credit company claimed some interest in such automobile, and such credit company was served with process by publication and decree pro confesso was taken against such company upon its failure to appear, and on appeal credit company was permitted to file forthcoming bond, appeal could not be defeated on ground that credit company was not a party to the suit. Universal Credit Co. v. Linn Motor Co., 195 Miss. 565, 15 So. 2d 694 (Miss. 1943).

Holder of deed of trust was necessary party to proceedings to establish and enforce mechanic's lien. Parsons v. Foster, 154 Miss. 363, 122 So. 387, 1929 Miss. LEXIS 124 (Miss. 1929).

To a suit to enforce the lien, under the statute, all persons claiming similar liens on the same property must be made parties or their rights will not be affected, whether suits be pending to enforce the liens of such others or not. Buntyn v. Shippers' Compress Co., 63 Miss. 94, 1885 Miss. LEXIS 22 (Miss. 1885).

Both the administrator and heirs are necessary parties to the suit to enforce the lien on the land of the deceased debtor, under the statute. Guerrant v. Dawson, 34 Miss. 149, 1857 Miss. LEXIS 120 (Miss. 1857).

Persons who claim the land adversely to those with whom the mechanic or materialman made his contract, are not proper parties to the suit to enforce the lien, as their interest will not be affected and cannot be adjudicated. Falconer v. Frazier, 15 Miss. 235, 1846 Miss. LEXIS 141 (Miss. 1846); English v. Foote, 16 Miss. 444, 1847 Miss. LEXIS 40 (Miss. 1847); Laud v. Muirhead, 31 Miss. 89, 1856 Miss. LEXIS 36 (Miss. 1856).

2. Intervention by interested person.

Where one, who had made repairs to a truck, intervened in an action by subsequent repairmen against the conditional vendee of the truck to recover for their labor and to impress a lien upon the truck and, the truck having been condemned to be sold to pay for all the repairs, took an assignment of the subsequent repairmen's lien and their interest in the judgment and then purchased the truck at the sale thereunder, thereby acquiring the vendee's title, which was the ownership of the truck subject to the lien of the conditional sales contract, the mechanic's liens were not merged into the judgment, but remained in effect as against the vendor's assignee, and the assignee was entitled to dispossess the holder of the mechanic's liens only when it had paid him what the purchaser of the truck owed him, if anything, for the repairs to it. General Motors Acceptance Corp. v. Shoemake, 192 Miss. 446, 6 So. 2d 309, 1942 Miss. LEXIS 32 (Miss. 1942).

3. Scope and effect of judgments.

Materialmen's lien judgment solely against owner who had theretofore parted with all interest in property was void of any real substance or force. Hervey v. Commercial Bank of Clarksdale, 152 Miss. 894, 120 So. 463, 1929 Miss. LEXIS 230 (Miss. 1929).

RESEARCH REFERENCES

Am. Jur.

51 Am. Jur. 2d, Liens § 86.

53 Am. Jur. 2d, Mechanics' Liens §§ 353 et seq.

CJS.

56 C.J.S., Mechanics' Liens §§ 322 et seq.

§ 85-7-145. Summons of defendants.

In all actions to enforce a lien granted by Section 85-7-131, the defendants shall be summoned, as in other actions at law, to appear and defend the action;

and in case any necessary party defendant shall be a nonresident of or absent from the state, or cannot be found, he may be made a party by publication, as in cases of nonresident or absent defendants in chancery, requiring him to appear on a day to be therein named; and in default of appearance, the same proceedings shall be had as if the defendant had been duly summoned and made default.

HISTORY: Codes, 1857, ch. 39, art. 8; 1871, § 1611; 1880, § 1386; 1892, § 2704; 1906, § 3064; Hemingway's 1917, § 2424; 1930, § 2264; 1942, § 362; Laws, 2014, ch. 487, § 22, eff from and after passage (approved Apr. 11, 2014).

Cross References — Bonds securing public construction contracts and suits thereon, see §§ 31-5-51 et seq.

Process in suits instituted to enforce liens, see § 85-7-195.

JUDICIAL DECISIONS

1. In general.

As regards suits under statute authorizing materialmen and laborers to bring suit on bond of contractor with state within one year after final settlement or abandonment of contract and publication of notice thereof, the parties interested are to be summoned as provided under this section. [Code 1942, § 362]. United States Fidelity & Guaranty Co. v. Plumbing Wholesale Co., 175 Miss. 675, 166 So. 529, 1936 Miss. LEXIS 31 (Miss. 1936).

This section [Code 1942, § 362] is a general section governing the summoning of parties touching controversies respecting statutory liens. United States Fidelity & Guaranty Co. v. Dedeaux, 168 Miss. 794, 152 So. 274, 1934 Miss. LEXIS 364 (Miss. 1934).

RESEARCH REFERENCES

ALR.

Sufficiency of notice, claim, or statement of mechanic's lien with respect to nature of work. 27 A.L.R.2d 1169.

Am. Jur.

53 Am. Jur. 2d, Mechanics' Liens § 368.

§ 85-7-147. Defenses and counterclaims.

In all actions to enforce a lien granted by Section 85-7-131, the defendants, or any of them, by answer to the petition, may make any defense they may have against the demand of the plaintiff, and also any counterclaim against him touching the subject-matter of the suit. And should any defendant claim to have a lien upon the same property, for materials furnished or labor done thereon, he may present the lien by his answer; and the cause shall be at issue without a replication, and the parties shall be confined at the trial to the cause of action and defense set forth in the pleadings.

HISTORY: Codes, 1857, ch. 39, art. 9; 1871, § 1612; 1880, § 1387; 1892, § 2705; 1906, § 3065; Hemingway's 1917, § 2425; 1930, § 2265; 1942, § 363; Laws, 2014, ch. 487, § 23, eff from and after passage (approved Apr. 11, 2014).

Cross References — Trial of right of property, see §§ 11-23-7 et seq.

JUDICIAL DECISIONS

1. In general.

In proceeding to enforce materialmen's lien, it is duty of trial court to confine parties to cause of action and defense set forth in pleadings, and supreme court has same duty on appeal. Bullock v. Hans, 208 Miss. 41, 43 So. 2d 670, 1949 Miss. LEXIS 405 (Miss. 1949).

Holder of deed of trust on property, as a necessary party to a suit to establish mechanic's lien on such property, had the right to defend under this section [Code 1942, § 363] and to counterclaim against plaintiff with respect to subject matter of the suit. Parsons v. Foster, 154 Miss. 363, 122 So. 387, 1929 Miss. LEXIS 124 (Miss. 1929).

Permitting defendant to reopen case and make proof of recoupment not authorized by pleading, was error. Carter v. Collins, 151 Miss. 1, 117 So. 336, 1928 Miss. LEXIS 276 (Miss. 1928).

RESEARCH REFERENCES

ALR.

Claim barred by limitation as subject to setoff, counterclaim, recoupment, cross bill, or cross action. 1 A.L.R.2d 630.

Release or waiver of mechanic's lien by general contractor as affecting rights of subcontractor or materialman. 75 A.L.R.3d 505.

Am. Jur.

51 Am. Jur. 2d, Liens § 88.

53 Am. Jur. 2d, Mechanics' Liens §§ 380, 381.

17 Am. Jur. Pl & Pr Forms (Rev) Mechanics' Liens, Forms 118, 119, 134, 135, 148-150 (answers in proceedings to enforce mechanics' liens).

§§ 85-7-149 and 85-7-151. Repealed.

Repealed by Laws 2014, ch. 487, § 24, effective upon approval April 11, 2014.

§ 85-7-149. [Codes, 1857, ch. 39, art. 10; 1871, § 1613; 1880, § 1388; 1892, § 2706; 1906, § 3066; Hemingway's 1917, § 2426; 1930, § 2266; 1942, § 364.]

§ 85-7-151. [Codes, 1857, ch. 39, art. 11; 1871, § 1614; 1880, § 1389; 1892, § 2707; 1906, § 3067; Hemingway's 1917, § 2427; 1930, § 2267; 1942, § 365; Laws, 1987, ch. 392, § 1, eff from and after July 1, 1987.]

Editor's Notes — Former § 85-7-149 related to jury trial for actions to enforce liens and the applicability of rules of evidence and practice.

Former § 85-7-151 related to costs and attorneys' fees.

JUDICIAL DECISIONS

1. In general.

In an action to enforce a lien for labor and materials furnished in construction of a boardinghouse, the testimony as to the statements of contractor that he ordered materials and was dealing with the claimants because the property owner referred him to them was not objectionable on the ground of hearsay because this testimony was admissible as an independently relevant fact to explain the circumstances under which the claimants furnished materials for which they were claiming. Handshoe v. Daly, 211 Miss. 189, 51 So. 2d 230, 1951 Miss. LEXIS 347 (Miss. 1951).

RESEARCH REFERENCES

Am. Jur.

51 Am. Jur. 2d, Liens § 92.

53 Am. Jur. 2d, Mechanics' Liens §§ 398 et seq.

16 Am. Jur. Pl & Pr Forms (Rev) Liens, Forms 81 et seq. (judgments foreclosing liens).

17 Am. Jur. Pl & Pr Forms (Rev) Mechanics' Liens, Form 3 (instruction to jury as to necessity for valid contract or consent).

17 Am. Jur. Pl & Pr Forms (Rev) Mechanics' Liens, Forms 171 et seq. (judgments or decrees).

CJS.

56 C.J.S., Mechanics' Liens §§ 365 et seq.

§ 85-7-153. Execution.

When the judgment shall be against the house, building, structure, or fixture and land, or against the same without the land, or against a railroad, or railroad embankment, a special writ of execution shall issue, to make the amount recovered by sale of the property, which shall be described therein; and when both a general and special judgment shall be given, both writs may be issued, either separately or combined in one, or one may be issued after the return of the other for the whole or the residue, as the case may require.

HISTORY: Codes, 1857, ch. 39, art. 12; 1871, § 1615; 1880, § 1390; 1892, § 2708; 1906, § 3068; Hemingway's 1917, § 2428; 1930, § 2268; 1942, § 366.

Cross References — Issuance and return of executions, see § 13-3-113.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 366] bears out the construction of Code 1906, § 3060 (Code 1942, § 358) that if additions and repairs to property owner's building made at the request of another can be removed without injury to the building, such additions and repairs are subject to the lien of the statute, while if they cannot be so removed, the lien of the statute does not attach. Chears Floor & Screen Co. v. Gidden, 159 Miss. 288, 131 So. 426, 1930 Miss. LEXIS 374 (Miss. 1930).

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Mechanics' Liens § 421.

§ 85-7-155. Sale of house, building, etc., with or without land; procedure; purchaser's estate in land.

If such special writ of execution be for the sale of a house, building, structure, or fixture and the land, or for the sale of the same without the land, the officer shall levy on, advertise, sell, and convey the same as in other cases of land levied on for debt; and if the sale be of the house, building, structure, or fixtures alone, and the same shall have been erected or constructed and put on the land subsequently to a former encumbrance on the land, the purchaser shall acquire the same free from such former encumbrance, and his purchase shall authorize him to enter and remove such house, building, structure, or fixture from the land with reasonable dispatch; but if the house, building, structure or fixture so sold, or sold with the land, shall have been simply altered or repaired subsequently to a former encumbrance on the land, the purchaser shall acquire the same subject to such encumbrance, unless the encumbrancer consented in writing to the alteration or repairs, in which case the house, building, structure, or fixtures so altered or repaired shall be sold free from such encumbrance, and with the right in the purchaser to enter and remove the same. If the land be sold also, the purchaser shall acquire such estate therein as the owner or builder, as the case may be, had at the time the lien to enforce which the sale is made attached thereon, or at any time afterwards, subject to prior encumbrances; but buildings, structures, or fixtures erected or constructed and put on the land subsequently to prior encumbrances shall pass to the purchaser as if the sale were of such buildings, structures, or fixtures alone.

HISTORY: Codes, 1857, ch. 39, art. 13; 1871, § 1616; 1880, § 1391; 1892, § 2709; 1906, § 3069; Hemingway's 1917, § 2429; 1930, § 2269; 1942, § 367.

Cross References — Where sales under execution are made, see §§ 13-3-161 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Right to enter and remove.

1. In general.

In an action to determine the priority between a mechanic's lien and first and second deeds of trust, the mechanic's lien asserted by a contractor, who had repaired a fixture on the premises, was subordinate to the first deed of trust on the property, where the owner of that deed of trust did not consent in writing to the alteration or repair of the fixture, but had priority over the rights of purchasers of a trustee's deed which foreclosed a second deed of trust, where the purchasers of that deed bought the property at foreclosure of the second deed with notice of the lien's existence. Ziller v. Atkins Motel Co., 244 So. 2d 409, 1971 Miss. LEXIS 1334 (Miss. 1971).

When in a suit for a mechanic's and materialmen's lien on heating equipment installed on hotel premises the contract was not recorded, and no notice of lis pendens given or writ of seizure of the property issued, and the property was claimed by the grantee of the realty from a purchaser at foreclosure of a prior deed of trust as a purchaser for value without notice of the unpaid lien, the burden was on such grantee to prove that he was a purchaser for value without notice, and in the absence of such proof, the lien claimant was entitled to recover. Hamilton Bros. Co. v. Baxter, 188 Miss. 610, 195 So. 335, 1940 Miss. LEXIS 50 (Miss. 1940).

If a contract under which material was installed on realty was not recorded, and no lis pendens notice was filed at or after the time suit to enforce the mechanic's and materialmen's lien was instituted, and if the material should be considered as real estate fixtures, and if the grantee of the realty from a purchaser at foreclosure at a prior deed of trust was a purchaser for value without actual notice of the lien, such grantee would take the property free of the lien. Hamilton Bros. Co. v. Baxter, 188 Miss. 610, 195 So. 335, 1940 Miss. LEXIS 50 (Miss. 1940).

Under this section [Code 1942, § 367], heating equipment installed on hotel premises and easily detachable therefrom without substantial impairment to the premises, would still be subject to a mechanic's and materialmen's lien notwithstanding a prior deed of trust covering the property, but such lien would not include the land. Hamilton Bros. Co. v. Baxter, 188 Miss. 610, 195 So. 335, 1940 Miss. LEXIS 50 (Miss. 1940).

This section [Code 1942, § 367] bears out the construction of Code 1906, § 3060 (Code 1942, § 358) that if additions and repairs to property owner's building made at the request of another can be removed without injury to the building, such additions and repairs are subject to the lien of the statute, while if they cannot be so removed, the lien of the statute does not attach. Chears Floor & Screen Co. v. Gidden, 159 Miss. 288, 131 So. 426, 1930 Miss. LEXIS 374 (Miss. 1930).

Purchaser under mechanic's lien gets new building free of prior encumbrances. Big Three Lumber Co. v. Curtis, 130 Miss. 74, 93 So. 487, 1922 Miss. LEXIS 188 (Miss. 1922).

A court of chancery will enforce, and it is the proper forum in which to assert the rights of one who owns buildings situated on land of another. Otley v. Haviland, Clark & Co., 36 Miss. 19, 1858 Miss. LEXIS 77 (Miss. 1858); Watkins v. Owens, 47 Miss. 593, 1873 Miss. LEXIS 7 (Miss. 1873).

2. Right to enter and remove.

The statute contemplates a prompt exercise of the right to enter and remove buildings, and a failure to do so is a waiver of it; What is "reasonable dispatch" is determinable by circumstances, but delay for two years, in the absence of explanation, will be conclusive of a waiver. Priebatsch v. Third Baptist Church, 66 Miss. 345, 6 So. 237, 1899 Miss. LEXIS 105 (Miss. 1899).

A materialman recovering a special judgment, and acquiring title to the house by purchase, but who does not remove it for two years, waives his right to remove it. Priebatsch v. Third Baptist Church, 66 Miss. 345, 6 So. 237, 1899 Miss. LEXIS 105 (Miss. 1899).

RESEARCH REFERENCES

ALR.

Mechanic's lien based on contract with vendor pending executory contract for sale of property as affecting purchaser's interest. 50 A.L.R.3d 944.

Am. Jur.

51 Am. Jur. 2d, Liens § 94.

53 Am. Jur. 2d, Mechanics' Liens §§ 330 et seq.

16 Am. Jur. Pl & Pr Forms (Rev) Liens, Forms 91 et seq. (sale of property following judgment of foreclosure).

12 Am. Jur. Legal Forms 2d, Liens §§ 165:26, 165:27 (notice of sale to satisfy lien).

CJS.

56 C.J.S., Mechanics' Liens §§ 405, 406 et seq.

§ 85-7-157. Sale of railroad land or buildings; procedure; purchaser's estate property.

If the special writ of execution be for the sale of a railroad or railroad embankment, the officer shall levy on, advertise, sell, and convey the same as in case of land levied on for debt; and where the property may be in several counties, the officer may sell the same and the right of way, and all depots and other buildings used or connected therewith, as if the same were situated wholly within his county, and the purchaser shall acquire the property free from all prior encumbrances saving the rights of those having concurrent liens under this chapter.

HISTORY: Codes, 1880, § 1391; 1892, § 2710; 1906, § 3070; Hemingway's 1917, § 2430; 1930, § 2270; 1942, § 368.

ARTICLE 11.

SUITS ON PERFORMANCE BONDS.

Sec.
85-7-181 through 85-7-185. Repealed.
85-7-187. Bond; persons with right of action.
85-7-189. Bond; suit on; commencement.
85-7-191. Bond; suit on; only one action permitted; intervention.
85-7-193. Bond: judgment; pro rata recovery where funds insufficient.
85-7-195. Process.
85-7-197 through 85-7-201. Repealed.

§§ 85-7-181 through 85-7-185. Repealed.

Repealed by Laws 2014, ch. 487, § 24, effective upon approval April 11, 2014.

§ 85-7-181. [Codes, 1880, § 1381; 1892, § 2714; 1906, § 3074; Hemingway's 1917, § 2434; 1930, § 2274; 1942, § 372; Laws, 1904, ch. 153; Laws, 1918, ch. 128; Laws, 1987, ch. 392, § 2; Laws, 2010, ch. 372, § 3, eff from and after July 1, 2010.]

§ 85-7-183. [Codes, Hemingway's 1921 Supp. § 2434a; 1930, § 2275; 1942, § 373; Laws, 1918, ch. 128.]

§ 85-7-185. [Codes, Hemingway's 1921 Supp. § 2434b; 1930, § 2276; 1942, § 374; Laws, 1918, ch. 128; Laws, 2010, ch. 372, § 4; Laws, 2012, ch. 357, § 1, eff from and after July 1, 2012.]

Editor's Notes — Former § 85-7-181 related to subcontractor's written notice to property owner of amount due subcontractor by contractor and suit.

Former § 85-7-183 prohibited assignments of a contract or proceeds by contractors.

Former § 85-7-185 related to contractor or subcontractor bonds guaranteeing performance of contract and prompt payment of all persons furnishing labor or materials or equipment under the contract.

§ 85-7-187. Bond; persons with right of action.

If only a performance bond has been provided in accordance with this chapter and if no suit shall be brought by the obligee within six (6) months from the date of the earlier of final completion or actual use or occupancy of the project for its intended purpose, then any person supplying labor or materials to the bond principal on the project shall have a right of action on said bond for his use and benefit against said bond principal and the sureties thereon and to prosecute same to final judgment and execution, subject to the rights and demands of the bond obligee.

HISTORY: Codes, Hemingway's 1921 Supp. § 2434c; 1930, § 2277; 1942, § 375; Laws, 1918, ch. 128; Laws, 2005, ch. 461, § 1, eff from and after July 1, 2005.

Cross References — Remedy to enforce lien, see § 85-7-31.

How and when lien is enforced, see § 85-7-141.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
2. Construction and application.

1. Validity.

This section [Code 1942, § 375] and companion provisions do not, as applied to a bond which expresses an intention to exclude materialmen and laborers, constitute an arbitrary interference with liberty of contract, with resulting violation of the Fourteenth Amendment. Hartford Acci. & Indem. Co. v. N. O. Nelson Mfg. Co., 291 U.S. 352, 54 S. Ct. 392, 78 L. Ed. 840, 1934 U.S. LEXIS 508 (U.S. 1934).

2. Construction and application.

Materialmen's suit against principal road contractor and surety on subcontractor's bond running to principal contractor, held governed by statute regarding suits on bonds to pay for labor and materials. United States Fidelity & Guaranty Co. v. Dedeaux, 168 Miss. 794, 152 So. 274, 1934 Miss. LEXIS 364 (Miss. 1934).

Statute held applicable to construction of interstate railroad. Gulf States Creosoting Co. v. Southern Finance & Constr. Corp., 166 Miss. 714, 146 So. 860, 1933 Miss. LEXIS 360 (Miss. 1933).

RESEARCH REFERENCES

Law Reviews.

Dunn, Construction Contract Claims and Litigation-Suits on Public Bonds and Suits on Private Bonds. 55 Miss. L. J. 431, September 1985.

§ 85-7-189. Bond; suit on; commencement.

(1) Suit on a performance claim by an obligee on a bond given in accordance with this chapter shall be commenced as follows:

(a) If the obligee is the owner of the project being constructed, such obligee shall bring suit within one (1) year after the earlier of final completion or actual use or occupancy of the project for its intended purpose; or

(b) If the obligee is other than an owner of the project being constructed, such obligee shall bring suit within one (1) year after such obligee receives final payment with respect to the project.

(2) When suit is instituted on a claim for payment on a payment bond given in accordance with this chapter, it shall be commenced within one (1) year after the day on which the last of the labor was performed or material or rental or lease equipment was supplied by the person bringing the action and not later.

(3) Any suit on a bond given in accordance with this chapter shall be brought in the county in which the contract or some part thereof was performed or in the county in which service of process may be obtained upon either the principal or the surety on such bond.

HISTORY: Codes, Hemingway's 1921 Supp. § 2434d; 1930, § 2278; 1942, § 376; Laws, 1918, ch. 128; Laws, 1994, ch. 626, § 5; Laws, 2005, ch. 461, § 2; Laws, 2010, ch. 372, § 5, eff from and after July 1, 2010.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
2. Construction and application.

1. Validity.

This section [Code 1942, § 376] and companion provisions do not, as applied to a bond which expresses an intention to exclude materialmen and laborers, constitute an arbitrary interference with liberty of contract, with resulting violation of the Fourteenth Amendment. Hartford Acci. & Indem. Co. v. N. O. Nelson Mfg. Co., 291 U.S. 352, 54 S. Ct. 392, 78 L. Ed. 840, 1934 U.S. LEXIS 508 (U.S. 1934).

2. Construction and application.

The statute's reference to owners as part of the category of "any such persons" means owners who have acted as laborers or materialmen, i.e., owners who have supplied materials or labor to the project. Cooper Indus. v. Tarmac Roofing Sys., 276 F.3d 704, 2002 U.S. App. LEXIS 173 (5th Cir. Miss. 2002).

This section was applicable in a federal action on a contract bond to which the Miller Act was inapplicable, there having been made applicable to the bond by the regulation requiring it no particular statute of limitations and the court having consequently looked to the state statute of limitations applicable to actions of a similar nature. United States on behalf of Mississippi Road Supply Co. v. H. R. Morgan, Inc., 542 F.2d 262, 1976 U.S. App. LEXIS 6248 (5th Cir. Miss. 1976), cert. denied, 434 U.S. 828, 98 S. Ct. 106, 54 L. Ed. 2d 86, 1977 U.S. LEXIS 2882 (U.S. 1977), overruled in part, United States use of Carter Equipment Co. v. H. R. Morgan, Inc., 554 F.2d 164, 1977 U.S. App. LEXIS 12903 (5th Cir. Miss. 1977).

Code 1942, § 376, which applies to contractor's performance bonds, has no application to a fidelity bond or fidelity insurance. Latham v. United States Fidelity & Guaranty Co., 267 So. 2d 895, 1972 Miss. LEXIS 1431 (Miss. 1972).

The one-year statute of limitations provided for in this section [Code 1942, § 376] does not begin to run until there has been publication of notice of settlement or abandonment of the contract. Transamerica Ins. Co. v. Paine Supply Co., 194 So. 2d 490, 1967 Miss. LEXIS 1409 (Miss. 1967).

The publication of notice required by this section [Code 1942, § 376] applies both where the obligee makes final settlement and where it has determined that the contract has been abandoned. Transamerica Ins. Co. v. Paine Supply Co., 194 So. 2d 490, 1967 Miss. LEXIS 1409 (Miss. 1967).

The publication required by this section [Code 1942, § 376] cannot be waived by custom, nor, in the case of a private contract, is publication of notice contrary to public policy. Transamerica Ins. Co. v. Paine Supply Co., 194 So. 2d 490, 1967 Miss. LEXIS 1409 (Miss. 1967).

There is no difference in the meaning of this section [Code 1942, § 376] and that of Code 1942, § 9016. Transamerica Ins. Co. v. Paine Supply Co., 194 So. 2d 490, 1967 Miss. LEXIS 1409 (Miss. 1967).

Lessors of equipment are not within the coverage provided by the statute, even where the contractor has agreed to furnish "all labor, material and equipment, service and supplies necessary to complete the job and to furnish a suitable performance bond." Great American Ins. Co. v. Busby, 247 Miss. 39, 150 So. 2d 131, 1963 Miss. LEXIS 280 (Miss. 1963).

Materialmen's suit against principal road contractor and surety on subcontractor's bond running to principal contractor, held governed by statute regarding suits on bonds to pay for labor and materials. United States Fidelity & Guaranty Co. v. Dedeaux, 168 Miss. 794, 152 So. 274, 1934 Miss. LEXIS 364 (Miss. 1934).

State statutes providing for lien in favor of subcontractors, laborers, and materialmen are applicable to construction of interstate railroad, and were not suspended by federal law. Gulf States Creosoting Co. v. Southern Finance & Constr. Corp., 166 Miss. 714, 146 So. 860, 1933 Miss. LEXIS 360 (Miss. 1933).

In suit against contractor and surety, intervention based on materialman's claim may be allowed any time within one year after final settlement of contract. Hartford Acci. & Indem. Co. v. N. O. Nelson Mfg. Co., 160 Miss. 504, 135 So. 349, 1931 Miss. LEXIS 228 (Miss. 1931).

RESEARCH REFERENCES

ALR.

Amount for which mechanic's lien may be obtained where contract has been terminated or abandoned by consent of parties or without fault on contractor's part. 51 A.L.R.2d 1009.

Validity of contractual time period, shorter than statute of limitations, for bringing action. 6 A.L.R.3d 1197.

Law Reviews.

Dunn, Construction Contract Claims and Litigation-Suits on Public Bonds and Suits on Private Bonds. 55 Miss. L. J. 431, September 1985.

§ 85-7-191. Bond; suit on; only one action permitted; intervention.

If only a performance bond is given in accordance with this chapter and if suit is instituted on said performance bond only one (1) action shall be brought for performance and payment claims and any person entitled to sue may upon application intervene and be made a party to said suit and such intervention must occur within the time limited for such person to bring an original action; provided, however, if a separate payment bond is given then only one (1) separate action for payment claims shall likewise be brought on the payment bond and intervention shall be allowed in accordance with this statute.

HISTORY: Codes, Hemingway's 1921 Supp. § 2434e; 1930, § 2279; 1942, § 377; Laws, 1918, ch. 128; Laws, 2005, ch. 461, § 3, eff from and after July 1, 2005.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
2. Construction and application.

1. Validity.

Provision of private work bond statute (§ 85-7-191) establishing that only one cause of action is permitted against surety's bond is inapplicable to party who has not been given constitutionally adequate notice of suit. American Fidelity Fire Ins. Co. v. Athens Stove Works, Inc., 481 So. 2d 292, 1985 Miss. LEXIS 2444 (Miss. 1985).

This section [Code 1942, § 377] and companion provisions do not, as applied to a bond which expresses an intention to exclude materialmen and laborers, constitute an arbitrary interference with liberty of contract, with resulting violation of the Fourteenth Amendment. Hartford Acci. & Indem. Co. v. N. O. Nelson Mfg. Co., 291 U.S. 352, 54 S. Ct. 392, 78 L. Ed. 840, 1934 U.S. LEXIS 508 (U.S. 1934).

2. Construction and application.

One-action-only rule is affirmative defense which may be asserted by party wishing to take advantage of it; when defense is sustained, it is because defense in nature of plea in bar is held good, not because court lacks subject matter jurisdiction over second suit. American Fidelity Fire Ins. Co. v. Athens Stove Works, Inc., 481 So. 2d 292, 1985 Miss. LEXIS 2444 (Miss. 1985).

Materialmen's suit against principal road contractor and surety on subcontractor's bond held dismissible where former suit had been filed in another county on same bond against same surety by materialmen furnishing materials to subcontractor on same subcontract. United States Fidelity & Guaranty Co. v. Dedeaux, 168 Miss. 794, 152 So. 274, 1934 Miss. LEXIS 364 (Miss. 1934).

This section [Code 1942, § 377] and companion sections providing for lien in favor of subcontractors, laborers, and materialmen, are applicable to the construction of an interstate railroad, and were not suspended by federal law. Gulf States Creosoting Co. v. Southern Finance & Constr. Corp., 166 Miss. 714, 146 So. 860, 1933 Miss. LEXIS 360 (Miss. 1933).

In suit against contractor and surety permitting intervention and filing of answer and cross-bill after cause had been submitted on merits was proper, in absence of prejudice. Hartford Acci. & Indem. Co. v. N. O. Nelson Mfg. Co., 160 Miss. 504, 135 So. 349, 1931 Miss. LEXIS 228 (Miss. 1931).

In suit against contractor and surety, intervention based on materialman's claim may be allowed any time within one year after final settlement of contract. Hartford Acci. & Indem. Co. v. N. O. Nelson Mfg. Co., 160 Miss. 504, 135 So. 349, 1931 Miss. LEXIS 228 (Miss. 1931).

§ 85-7-193. Bond: judgment; pro rata recovery where funds insufficient.

If only a performance bond is given in accordance with this chapter and the recovery on the performance bond should be inadequate to pay the full amount found due including amounts due the obligee, judgment shall be given after the performance bond obligee is fully satisfied for all its claims, demands, rights and damages to each person, including reasonable attorney's fees in an amount to be set by the judge, pro rata of the amount of the recovery. The surety on said performance bond may pay into court for distribution the full amount of its liability, less any amount which may have been paid to the performance bond obligee by reason of the execution of said bond, and upon so doing the surety will be relieved from further liability.

HISTORY: Codes, Hemingway's 1921 Supp. § 2434f; 1930, § 2280; 1942, § 378; Laws, 1918, ch. 128; Laws, 1987, ch. 392, § 3; Laws, 2005, ch. 461, § 4, eff from and after July 1, 2005.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
2. Construction and application.

1. Validity.

This section [Code 1942, § 378] and companion provisions do not, as applied to a bond which expresses an intention to exclude materialmen and laborers, constitute an arbitrary interference with liberty of contract, with resulting violation of the Fourteenth Amendment. Hartford Acci. & Indem. Co. v. N. O. Nelson Mfg. Co., 291 U.S. 352, 54 S. Ct. 392, 78 L. Ed. 840, 1934 U.S. LEXIS 508 (U.S. 1934).

2. Construction and application.

This section did not allow an award of attorneys fees where the bond was sufficient to cover the full amount of judgment. Sentinel Indus. Contr. Corp. v. Kimmins Indus. Serv. Corp., 743 So. 2d 954, 1999 Miss. LEXIS 235 (Miss. 1999).

This section [Code 1942, § 378] and companion sections providing for lien in favor of subcontractors, laborers, and materialmen, are applicable to the construction of an interstate railroad, and were not suspended by federal law. Gulf States Creosoting Co. v. Southern Finance & Constr. Corp., 166 Miss. 714, 146 So. 860, 1933 Miss. LEXIS 360 (Miss. 1933).

RESEARCH REFERENCES

ALR.

Amount of attorneys' compensation in absence of contract or statute fixing amount. 57 A.L.R.3d 475.

Priority between attorney's lien for fees against a judgment and lien of creditor against same judgment. 34 A.L.R.4th 665.

Attorney's assertion of retaining lien as violation of ethical code or rules governing professional conduct. 69 A.L.R.4th 974.

Attorney's retaining lien: what items of client's property or funds are not subject to lien. 70 A.L.R.4th 827.

Law Reviews.

Dunn, Construction Contract Claims and Litigation-Suits on Public Bonds and Suits on Private Bonds. 55 Miss. L. J. 431, September 1985.

§ 85-7-195. Process.

To all suits instituted under the provisions of this chapter the parties interested shall be summoned as provided by Section 85-7-145; provided further that where any contractors' bond has been executed and delivered under any of the foregoing sections of this chapter and the contractor or principal obligor in said bond, or any one or more of said principal obligors therein shall be a non-resident or shall remove from the state, or so conceal himself therein that service of process cannot be directly made upon him personally, then in such case personal service of summons for said absent or absconding principal obligor may be made upon the insurance commissioner of the State of Mississippi in like manner, with the same procedure thereabout, and with the same effect as process may be served on said commissioner in cases of a defendant foreign insurance company; and the delivery of any such bond within this state shall be deemed equivalent to the appointment, by the principal obligors and by the surety or sureties therein, of the state insurance commissioner or his successors in office to be the true and lawful attorney of said obligors upon whom may be served all lawful process in any action or proceeding arising under said bond when for any one of the reasons aforesaid the said principal obligors or any one of them cannot be otherwise served with personal summons in this state, and the delivery of any bond in this chapter mentioned shall be a signification of the agreement and power of attorney of the said principal obligor or obligors and of said sureties that any such process against said principal or principals which is so served shall be of the same legal force and validity as if served upon the said principal or principals personally.

HISTORY: Codes, Hemingway's 1921 Supp. § 2434g; 1930, § 2281; 1942, § 379; Laws, 1918, ch. 128.

Cross References — Legal process served upon commissioner as attorney for foreign insurance company, see § 83-5-11.

Commissioner of insurance acting as agent for process on foreign insurance company, see § 83-21-1.

JUDICIAL DECISIONS

ANALYSIS

1. Validity.
2. Construction and application.

1. Validity.

This section [Code 1942, § 379] and companion provisions do not, as applied to a bond which expresses an intention to exclude materialmen and laborers, constitute an arbitrary interference with liberty of contract, with resulting violation of the Fourteenth Amendment. Hartford Acci. & Indem. Co. v. N. O. Nelson Mfg. Co., 291 U.S. 352, 54 S. Ct. 392, 78 L. Ed. 840, 1934 U.S. LEXIS 508 (U.S. 1934).

2. Construction and application.

Materialmen's suit against principal road contractor and surety on subcontractor's bond running to principal contractor held governed by statutes regarding suits on bonds to pay for labor and materials furnished, and not by statute requiring notice of suit by publication. United States Fidelity & Guaranty Co. v. Dedeaux, 168 Miss. 794, 152 So. 274, 1934 Miss. LEXIS 364 (Miss. 1934).

Materialmen's suit against principal road contractor and surety on subcontractor's bond, held dismissible where former suit filed in another county of same bond, against same surety by materialmen furnishing materials to subcontractor on same subcontract. United States Fidelity & Guaranty Co. v. Dedeaux, 168 Miss. 794, 152 So. 274, 1934 Miss. LEXIS 364 (Miss. 1934).

This section [Code 1942, § 379] and companion sections providing for lien in favor of subcontractors, laborers, and materialmen, are applicable to the construction of an interstate railroad, and were not suspended by federal law. Gulf States Creosoting Co. v. Southern Finance & Constr. Corp., 166 Miss. 714, 146 So. 860, 1933 Miss. LEXIS 360 (Miss. 1933).

RESEARCH REFERENCES

Am. Jur.

53 Am. Jur. 2d, Mechanics' Liens § 368.

CJS.

56 C.J.S., Mechanics' Liens § 335.

Law Reviews.

Dunn, Construction Contract Claims and Litigation-Suits on Public Bonds and Suits on Private Bonds. 55 Miss. L. J. 431, September 1985.

§§ 85-7-197 through 85-7-201. Repealed.

Repealed by Laws 2014, ch. 487, § 24, effective upon approval April 11, 2014.

§ 85-7-197. [Codes, 1930, § 2282; 1942, § 380; Laws, 1928, ch. 136; Laws, 1984, ch. 319, eff from and after July 1, 1984..]

§ 85-7-199. [Codes, 1930, § 2283; 1942, § 381; Laws, 1928, ch. 136.]

§ 85-7-201. [Codes, 1930, § 2284; 1942, § 382; Laws, 1928, ch. 136.]

Editor's Notes — Former § 85-7-197 provided that liens may be recorded in lis pendens record.

Former § 85-7-199 related to the entry of satisfaction when liens are paid or extinguished.

Former § 85-7-201 related to penalties for filing a false notice and action to expunge.

JUDICIAL DECISIONS

1. In general.

In an action by the purchaser of a house for damages against the builder, the trial court erred in sustaining the builder's demurrer to one count of the complaint charging it with falsely filing a materialmen's lien in 1977 against the property without providing notice to the purchaser as required by § 85-7-197 [repealed] where the claim was not barred by the one-year statute of limitations set out in § 85-7-201 [repealed] because the suit had been filed in 1979 within a month after the purchaser first became aware of the lien. The fact that the notice of lien was listed in the "Notice of Construction Liens" book Liens: book established by § 85-7-133, rather than on the lis pendens docket established by by § 85-7-197 [repealed], did not excuse the builder from the notice requirement of the latter statute. Hicks v. Greenville Lumber Co., 387 So. 2d 94, 1980 Miss. LEXIS 2056 (Miss. 1980).

Knowledge that a house is newly built and that the owner is behind hand in his payments to claimant is not the equivalent of actual notice of the claim of a materialman. Jones Supply Co. v. Ishee, 249 Miss. 515, 163 So. 2d 470, 1964 Miss. LEXIS 412 (Miss. 1964).

Materialmen could have protected their interest against the purchaser of a deed of trust by filing either the contracts under which their liens arose, or lis pendens notices in the office of the chancery clerk. Southern Life Ins. Co. v. Pollard Appliance Co., 247 Miss. 211, 150 So. 2d 416, 1963 Miss. LEXIS 294 (Miss. 1963).

RESEARCH REFERENCES

ALR.

Amount for which mechanic's lien may be obtained where contract has been terminated or abandoned by consent of parties or without fault on contractor's part. 51 A.L.R.2d 1009.

Sale of real property as affecting time for filing notice of or perfecting mechanic's liens as against purchaser's interest. 76 A.L.R.2d 1163.

What constitutes "commencement of building or improvement" for purposes of determining accrual of mechanic's lien. 1 A.L.R.3d 822.

Am. Jur.

53 Am. Jur. 2d, Mechanics' Liens §§ 184 et seq.

CJS.

57 C.J.S., Mechanics' Liens §§ 107 et seq.

Law Reviews.

1984 Mississippi Supreme Court Review: Property. 55 Miss. L. J. 135, March, 1985.

Dunn, Construction Contract Claims and Litigation-Suits on Public Bonds and Suits on Private Bonds. 55 Miss. L. J. 431, September 1985.

ARTICLE 13.

LAUNDRY PLANT OPERATORS.

Sec.
85-7-221. Definition.
85-7-223. Sale of clothing, etc., for cleaning charges.
85-7-225. Sale of clothing, etc., for storage charges permitted.
85-7-227. Notice to owners.
85-7-229. Sale; disposition of proceeds.
85-7-231. Notices required to be posted; form and content of notices.

Sec.
85-7-233. Purposes and intent of Sections 85-7-221 through 85-7-233.
85-7-235. Sale of clothing after 180 days without notice or liability to owner.

§ 85-7-221. Definition.

As used in Sections 85-7-221 through 85-7-233, the term “person” shall mean a natural person, partnership, corporation, or other legal entity.

HISTORY: Codes 1942, § 382-01; Laws, 1946, ch. 468, §§ 1-8; Laws, 1962, ch. 489, eff 30 days from and after passage (approved June 1, 1962).

§ 85-7-223. Sale of clothing, etc., for cleaning charges.

Any garment, clothing, wearing apparel or household goods, which have been repaired, altered, dyed, cleaned, pressed, glazed or laundered, remaining in the possession of a person for a period of ninety (90) days or more, may be sold to pay reasonable or agreed charges, together with any costs or expenses provided for in Sections 85-7-221 through 85-7-233. Except as otherwise provided in Section 85-7-235, the person to whom such charges are payable and owing shall first notify the owner or owners of the proposed sale of the articles belonging to them and the amount of the charges due thereon in the manner prescribed in Section 85-7-227.

HISTORY: Codes, 1942, § 382-01; Laws, 1946, ch. 468 §§ 1-8; Laws, 1962, ch. 489; Laws, 1992, ch. 315, § 1, eff from and after July 1, 1992.

RESEARCH REFERENCES

Am. Jur.

51 Am. Jur. 2d, Liens §§ 52, 53 et seq.

12 Am. Jur. Legal Forms 2d, Liens § 165:23 (notice of lien and of sale-launderer's or drycleaner's lien for service rendered).

§ 85-7-225. Sale of clothing, etc., for storage charges permitted.

All garments, clothing, wearing apparel, or household goods placed in storage, or on which any of the services or labors mentioned in Section 85-7-223 have been performed and then placed in storage, by agreement and remaining in the possession of a person without the reasonable or agreed charges having been paid for a period of ninety (90) days, may be sold to pay said charges, provided that the person has notified the owner or owners thereof of the sale as prescribed in Section 85-7-227. Persons operating as warehouses or warehousemen shall not be affected by this section.

HISTORY: Codes, 1942 § 382-01; Laws, 1946, ch. 468, §§ 1-8; Laws, 1962, ch. 489; Laws, 1992, ch. 315, § 2, eff from and after July 1, 1992.

§ 85-7-227. Notice to owners.

The mailing by United States certified mail, return receipt requested, of a letter with a return address marked thereon, addressed to the owner or owners, at their last known address or the address given at the time of delivery of such articles to the person, shall constitute notice under the provisions of Sections 85-7-221 through 85-7-233. The letter shall state that the articles upon which the charges are owing will be disposed of unless they are redeemed within thirty (30) days of the mailing of the notice. Said notice shall be mailed at least thirty (30) days before the articles belonging to such owner or owners may be sold for charges due thereon. The cost of mailing said letter shall be added to the charges.

HISTORY: Codes, 1942, § 382-01; Laws, 1946, ch. 468, §§ 1-8; Laws, 1962, ch. 489; Laws, 1992, ch. 315, § 3, eff from and after July 1, 1992.

RESEARCH REFERENCES

Am. Jur.
12 Am. Jur. Legal Forms 2d, Liens § 165:23 (notice of lien and of sale-launderer's or drycleaner's lien for service rendered).

§ 85-7-229. Sale; disposition of proceeds.

If the chattel or chattels are not redeemed within thirty (30) days after the mailing of such letter, the person may sell such articles on the day and at the time and place specified in such letter. Such sales may be made either at public auction or by private sale. The proceeds of the sale in excess of the charges and necessary expenses of the procedure required by Sections 85-7-221 through 85-7-233, shall be held by the person for a period of six (6) months, and if not reclaimed by the owner thereof within that time shall escheat to the county and be paid over to the chancery clerk to be covered into the general fund of the county in which the sale was held.

HISTORY: Codes, 1942, § 382-01; Laws, 1946, ch. 468, §§ 1-8; Laws, 1962, ch. 489, eff 30 days from and after passage (approved June 1, 1962).

§ 85-7-231. Notices required to be posted; form and content of notices.

All persons, taking advantage of Sections 85-7-221 through 85-7-233, must keep posted at all times in a prominent place in their receiving office or offices, two (2) notices of dimensions of not less than eight and one-half (8-½) by eleven (11) inches which read as follows: "Not responsible for goods left on hand for more than ninety (90) days. All articles cleaned, pressed, glazed, laundered, washed, altered, dyed or repaired, and not called for in ninety (90) days, will be sold to pay charges," and "All articles which are stored by agreement and upon which the charges are not paid for ninety (90) days will be sold to pay charges."

HISTORY: Codes, 1942, § 382-01; Laws, 1946, ch. 468, §§ 1-8; Laws, 1962, ch. 489; Laws, 1992, ch. 315, § 4, eff from and after July 1, 1992.

§ 85-7-233. Purposes and intent of Sections 85-7-221 through 85-7-233.

The purpose and intent of Sections 85-7-221 through 85-7-233 is to provide an inexpensive means of enforcing liens for small amounts, and to that end the provisions of said sections shall be construed to create a lien in addition to, and shall not exclude, any liens which may exist by virtue of either the common law or any other statute of the State of Mississippi.

HISTORY: Codes, 1942, § 382-01; Laws, 1946, ch. 468, §§ 1-8; Laws, 1962, ch. 489, eff 30 days from and after passage (approved June 1, 1962).

§ 85-7-235. Sale of clothing after 180 days without notice or liability to owner.

If any person fails to claim any garment, clothing, wearing apparel, household goods or other article delivered to any laundry or dry cleaning establishment described in Sections 85-7-223 and 85-7-225 and displaying the notice described in Section 85-7-231, for a period of one hundred eighty (180) days, the laundry or dry cleaning establishment, without giving notice to the owner, may dispose of such garment, clothing, wearing apparel, household goods, or other article by whatever means it may choose, without liability or responsibility to the owner.

HISTORY: Laws, 1992, ch. 315, § 5, eff from and after July 1, 1992.

ARTICLE 15.

TOWING AND STORAGE OF MOTOR VEHICLES.

Sec.
85-7-251. Sale of motor vehicle for towing and storage cost; notice requirement.

§ 85-7-251. Sale of motor vehicle for towing and storage cost; notice requirement.

(1) The owner of a motor vehicle that has been towed at his request or at the direction of a law enforcement officer, or towed upon request of a real property owner upon whose property a vehicle has been left without permission of the real property owner, shall be liable for the reasonable price of towing and storage of such vehicle; and the towing company to whom the price of such labor and storage costs may be due shall have the right to retain possession of such motor vehicle until the price is paid.

(2) Within twenty-four (24) hours, the towing company shall report to the local law enforcement agency having jurisdiction any vehicle that has been towed unless the vehicle was towed at the request of the owner of the vehicle. If the owner of a towed vehicle has not contacted the towing company within five (5) business days of the initial tow, the towing company shall obtain from

the appropriate authority the names and addresses of any owner and lienholder. If the information from the appropriate authority fails to disclose the owner or lienholder, a good faith effort shall be made by the towing company to locate ownership, including a check for tag information, inspection sticker, or any papers in the vehicle that may indicate ownership. Upon location of the owner and lienholder, the towing company shall notify them by registered mail of the amount due for towing, postmarked no later than the tenth day following the initial tow. If such amount shall not be paid within thirty (30) days from the initial tow, the towing company to whom such charges are payable shall notify by certified mail any legal owner and holder of any lien, as disclosed by the motor vehicle title records or other investigation, of notice of sale of the property. If such property has not been redeemed within ten (10) days after the mailing of the certified letter, the towing company may commence sale of the property at public auction. The towing company shall publish for two (2) consecutive weeks a notice of sale in the newspaper having circulation in the county where the vehicle was initially towed. The proceeds of the sale of such property in excess of the amount needed to pay the towing, reasonable storage and necessary expenses of the procedures required by this section shall be held by the towing company for a period of six (6) months, and, if not reclaimed by the owner thereof within such time, shall become the property of the county and be paid to the chancery clerk of the county in which the sale was held to be deposited into the county general fund, subject, however, to any rights of the recorded lienholder.

(3) The failure to make a good faith effort to comply with the requirements of this section shall preclude the imposition of any storage charges or towing charges against the towed vehicle.

(4) Every towing company shall maintain accurate records for a period of three (3) years, which records shall identify the vehicles it has towed and stored and all procedures that it has taken to comply with the provisions of this chapter.

HISTORY: Laws, 1995, ch. 578, § 1, eff from and after July 1, 1995; Laws, 2020, ch. 462, § 1, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, in (1), deleted "for more than five (5) days" following "left without permission of the real property owner."

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Construction with other law.

1. In general.

Because issues regarding the possessory rights of the parties remained unresolved, remand for a new trial on the merits was warranted to determine which party had a superior possessory right, under Miss. Code Ann. §§ 11-37-101 and 85-7-251, to vehicles which a towing company towed from an auto repairman's leased premises at the landlord's direction. Crowell v. Butts, 153 So. 3d 719, 2013 Miss. App. LEXIS 866 (Miss. Ct. App. 2013), cert. denied, 145 So. 3d 674, 2014 Miss. LEXIS 395 (Miss. 2014).

Mechanic's lien and storage lien statutes which were advanced by a party, who repaired and then stored an excavator, did not allow attorney's fees. Caterpillar Fin. Servs. Corp. v. Burroughs Diesel, Inc., 125 So. 3d 659, 2013 Miss. App. LEXIS 175 (Miss. Ct. App.), cert. denied, 125 So. 3d 658, 2013 Miss. LEXIS 586 (Miss. 2013).

Summary judgment award for a lien against an excavator for storage costs was inappropriate because there was nothing in the stipulation before the county court about storage costs. The affidavits and materials filed in support of the motion for summary judgment discussed storage costs, but did not satisfy the statutory requirements of Miss. Code Ann. § 85-7-251. Caterpillar Fin. Servs. Corp. v. Burroughs Diesel, Inc., 125 So. 3d 659, 2013 Miss. App. LEXIS 175 (Miss. Ct. App.), cert. denied, 125 So. 3d 658, 2013 Miss. LEXIS 586 (Miss. 2013).

2. Construction with other law.

When defendant faced charges arising from defendant's operation of defendant's boat, and the boat was sold, Miss. Code Ann. §§ 99-49-1(4) did not entitle defendant to dismissal because the statute did not apply, as (1) the boat was never moved from a marina, and (2) the State was not notified the boat was being sold, since Miss. Code Ann. §§ 85-7-251 only required notice to the boat's registered owner. Hardy v. State, 137 So. 3d 289, 2014 Miss. LEXIS 227 (Miss. 2014).

The mechanic's lien statute, Miss. Code Ann. § 85-7-107 (1999), limits recovery to the costs of labor and materials, unlike § 85-7-251, which governs liens available for towing and storing motor vehicles. Allstate Ins. Co. v. Green, 794 So. 2d 170, 2001 Miss. LEXIS 159 (Miss. 2001).

RESEARCH REFERENCES

Am. Jur.

7A, Am. Jur. 2d, Automobiles and Highway Traffic § 284.

CJS.

36A C.J.S., Fines § 19.

ARTICLE 17.

GENERAL PROVISIONS.

Sec.

85-7-261. How lien created.
85-7-263. Liens on the same building, etc. concurrent.
85-7-265. Proceedings under justice courts.

§ 85-7-261. How lien created.

Unless otherwise expressly provided, the liens created or mentioned in this chapter shall exist by virtue of the relation of the parties, and without any writing, or if in writing, without recording; and the rights and liens conferred may be asserted and enforced by the assigns and personal representatives of the lienor.

HISTORY: Codes, 1880, § 1361; 1892, § 2683; 1906, § 3043; Hemingway's 1917, § 2401; 1930, § 2273; 1942, § 371.

Cross References — Arbitration of controversies arising out of construction contracts and related agreements, and failure of arbitration to effect liens, see § 11-15-101.

Criminal offense of removing property subject to lien out of state, see § 97-17-77.
Criminal offense of selling property on which lien exists, see § 97-19-51.

RESEARCH REFERENCES

Am. Jur.
51 Am. Jur. 2d, Liens §§ 9, 11, 12 et seq.
16 Am. Jur. Pl & Pr Forms (Rev), Liens, Forms 1 et seq. (creation and perfection of liens).

§ 85-7-263. Liens on the same building, etc. concurrent.

All liens for erecting, constructing, altering, or repairing the same building, house, structure, fixture, boat, water craft, railroad, or railroad embankment shall be concurrent, and shall be paid in proportion out of the proceeds of the property when sold; and in case the sheriff shall have doubts as to the proper application of the money, he may return the same to the court, stating the question, for its determination.

HISTORY: Codes, 1857, ch. 39, art. 14; 1871, § 1617; 1880, § 1392; 1892, § 2712; 1906, § 3072; Hemingway's 1917, § 2432; 1930, § 2272; 1942, § 370.

Cross References — Owelty being a lien, see § 11-21-33.
Lien created by party being binding on his share of partitioned property, see § 11-21-39.

JUDICIAL DECISIONS

1. In general.
This section [Code 1906, § 3072 (Code 1942, § 370)] applies only to liens for materials furnished to the owner or labor rendered under a contract with the owner, and does not apply to subcontractors, laborers, and materialmen, under the provisions of Code 1906, § 3074. (Code 1942, § 372). Enochs Lumber & Mfg. Co. v. Garber, 116 Miss. 229, 76 So. 730, 1917 Miss. LEXIS 285 (Miss. 1917).

RESEARCH REFERENCES

Am. Jur.
53 Am. Jur. 2d, Mechanics' Liens §§ 262 et seq.

§ 85-7-265. Proceedings under justice courts.

Justice courts shall have jurisdiction of cases arising under this chapter where the amount does not exceed the jurisdictional amount provided for in Section 9-11-9, Mississippi Code of 1972, and the proceedings shall be as nearly in accordance with the provisions of this chapter as may be practicable, and the parties shall have the right of appeal as in other cases. But the sale of buildings under their judgments may be advertised and made as sales of personal property levied on under execution issued by the justice court.

HISTORY: Codes, Hutchinson's 1848, ch. 45, art. 7 (3); 1857, ch. 39, art. 15;

1871, § 1618; 1880, § 1393; 1892, § 2713; 1906, § 3073; Hemingway's 1917, § 2433; 1930, § 2271; 1942, § 369; Laws, 1989, ch. 406, § 1, eff from and after July 1, 1989.

ARTICLE 19.

QUALIFYING PROVIDERS OF BURN CARE LIEN FOR CAUSES OF ACTION.

Sec.

85-7-301. Definitions; lien on causes of action accruing to injured persons for uncompensated traumatic burn care.
85-7-303. Filing of verified statement; contents; notice.
85-7-305. Duties of chancery clerk; lien book.
85-7-307. Effect of covenant not to bring an action; action to enforce lien; affidavit of payment.
85-7-309. Applicability.
85-7-311. Effect of Sections 85-7-301 through 85-7-315 on settlement before entry into qualifying hospital.
85-7-313. No independent right of action to determine liability for injuries.
85-7-315. False affidavit required by Section 85-7-307 as perjury.
85-7-317. Repealed.

§ 85-7-301. Definitions; lien on causes of action accruing to injured persons for uncompensated traumatic burn care.

(1) Except where the context otherwise requires in subsection (2) of this section, as used in Sections 85-7-301 through 85-7-315, the term:

(a) "Qualifying hospital" means any hospital designated as a burn center by the State Department of Health.

(b) "Qualifying practice" means any physician practice that provides care, treatment or services to a patient who has been admitted to a qualifying hospital.

(c) "Care, treatment or services" means burn care or burn-related treatment, or services furnished by a qualifying hospital or qualifying practice.

(d) "Uncompensated traumatic burn care" means any portion of care, treatment or services rendered by a qualifying hospital or qualifying practice with respect to a patient whose burn care, treatment or services arose out of a single accident or occurrence for which the qualifying hospital or qualifying practice did not receive payment.

(2) Any person, firm, authority or corporation operating a qualifying hospital or qualifying practice providing traumatic burn care in this state shall have a lien for the reasonable charges for care, treatment or services of an injured person for uncompensated traumatic burn care, which lien shall be only upon any and all causes of action accruing to the person to whom the care was furnished or to the legal representative of the person on account of injuries that gave rise to the causes of action and that necessitated the care, treatment or services, subject and subordinate, however, to any attorney's lien or fees.

The lien provided for in this subsection is only a lien against those causes of action and shall not be a lien against the injured person, the legal representative, or any other property or assets of those persons and shall not be evidence of the person's failure to pay a debt. This subsection shall not be construed to interfere with the exemption from Sections 85-7-301 through 85-7-315 provided by Section 85-7-309, nor shall this subsection prohibit an injured person or his legal representative from negotiating with a qualifying hospital or practice.

HISTORY: Laws, 2013, ch. 512, § 1; reenacted without change, Laws, 2016, ch. 394, § 1, eff from and after July 1, 2016; reenacted without change, Laws, 2019, ch. 425, § 1, eff from and after July 1, 2019.

§ 85-7-303. Filing of verified statement; contents; notice.

(1) In order to perfect the lien provided for in Section 85-7-301, the operator of the qualifying hospital or qualifying practice:

(a) Shall, not less than fifteen (15) days before the date of filing the statement required under paragraph (b) of this subsection, provide written notice to the patient and the legal representative of the patient, if applicable, and, to the best of the operator's knowledge, the persons, firms, corporations and their insurers claimed by the injured person or the legal representative of the injured person to be liable for damages arising from the injuries and shall include in the notice a statement that the lien is not a lien against the patient or any other property or assets of the patient and is not evidence of the patient's failure to pay a debt. The notice shall be sent to all those persons and entities by first-class and certified mail or statutory overnight delivery, return receipt requested; and

(b) Shall file in the office of the clerk of the chancery court of the county in which the qualifying hospital or qualifying practice is located and in the county in which the patient resides, if a resident of this state, a verified statement setting forth the name and address of the patient as it appears on the records of the qualifying hospital or qualifying practice; the name and location of the qualifying hospital or qualifying practice, and the name and address of the operator thereof; the dates of admission and discharge of the patient from the qualifying hospital, or with respect to a qualifying practice, the dates of treatment; the amount claimed to be due for the qualifying hospital or qualifying practice; and certification that the amount claimed is for treatment of uncompensated traumatic burn care, which statement must be filed within the following time period:

(i) If the statement is filed by a qualifying hospital, then the statement shall be filed within seventy-five (75) days after the person has been discharged from the facility; or

(ii) If the statement is filed by a qualifying practice, then the statement shall be filed within ninety (90) days after the person first sought treatment from the practice for the injury.

(2) The filing of the claim or lien shall be notice thereof to all persons, firms or corporations liable for the damages, whether or not they received the

written notice provided for in this section. The failure to perfect the lien by timely complying with the notice and filing provisions of subsection (1) of this section shall invalidate the lien, except as to any person, firm, or corporation liable for the damages, which receives before the date of any release, covenant not to bring an action, or settlement, actual notice of a notice and filed statement made under subsection (1) of this section, via hand delivery, certified mail, return receipt requested, or statutory overnight delivery with confirmation of receipt.

HISTORY: Laws, 2013, ch. 512, § 2; reenacted without change, Laws, 2016, ch. 394, § 2, eff from and after July 1, 2016; reenacted without change, Laws, 2019, ch. 425, § 2, eff from and after July 1, 2019.

§ 85-7-305. Duties of chancery clerk; lien book.

The clerk of the chancery court shall endorse the date and hour of filing on the statement filed under Section 85-7-303; and, at the expense of the county, the clerk shall provide a lien book with a proper index in which the clerk shall enter the date and hour of the filing; the names and addresses of the qualifying hospital or qualifying practice, the operators thereof, and the patient; and the amount claimed. The information shall be recorded in the name of the patient.

HISTORY: Laws, 2013, ch. 512, § 3; reenacted without change, Laws, 2016, ch. 394, § 3, eff from and after July 1, 2016; reenacted without change, Laws, 2019, ch. 425, § 3, eff from and after July 1, 2019.

§ 85-7-307. Effect of covenant not to bring an action; action to enforce lien; affidavit of payment.

(1) No release of the cause or causes of action or of any judgment thereon or any covenant not to bring an action thereon shall be valid or effectual against the lien created by Section 85-7-301 unless the holder thereof is given notification of the results of the cause of action or executes a release of the lien; and the injured party (the "claimant") or an assignee of the lien holder may enforce the lien by an action against the person, firm or corporation liable for the damages or the person, firm or corporation's insurer. If the claimant prevails in the action and if the claimant's balance of the award is insufficient to cover the medical liens, the court may determine pro rata compensation in favor of the claimant. In no case shall the payment towards the liens exceed fifty percent (50%) of the claimant's balance. Any qualifying hospital or qualifying practice that receives payments under the authority of Sections 85-7-301 through 85-7-315 shall release the claimant from any further liens for the cost of hospital care, treatment or services provided for which the lien was placed. The action shall be begun against the person liable for the damages or the person's insurer within one (1) year after the date the liability is finally determined by a settlement, by a release, by a covenant not to bring an action, or by the judgment of a court of competent jurisdiction.

(2) No release or covenant not to bring an action that is made before or after the patient was discharged from the qualifying hospital or qualifying

practice shall be effective against the lien perfected in accordance with Section 85-7-303, if the lien is perfected before the date of the release, covenant not to bring an action, or settlement unless notification is given to the qualifying hospital or qualifying practice; however, any person, firm or corporation that consummates a settlement, release or covenant not to bring an action with the person to whom care, treatment or services were furnished and that first procures from the injured party an affidavit as prescribed in subsection (3) of this section shall not be bound or otherwise affected by the lien except as provided in subsection (3) of this section, regardless of when the settlement, release or covenant not to bring an action was consummated.

(3) The affidavit shall affirm:

(a) That all bills incurred for treatment for the injuries for which a settlement is made have been fully paid or resolved; and

(b) The county of residence of the affiant, if a resident of this state; however, the person taking the affidavit shall not be protected thereby where the affidavit alleges the county of the affiant's residence and the lien of the qualifying hospital or qualifying practice is at that time on file in the office of the chancery clerk and is recorded in the name of the patient as it appears in the affidavit.

HISTORY: Laws, 2013, ch. 512, § 4; reenacted without change, Laws, 2016, ch. 394, § 4, eff from and after July 1, 2016; reenacted without change, Laws, 2019, ch. 425, § 4, eff from and after July 1, 2019.

§ 85-7-309. Applicability.

Sections 85-7-301 through 85-7-315 shall not apply to:

(a) A cause of action filed by a person who received care, treatment or services from a qualifying hospital or a qualifying practice whose medical costs were paid by the Centers for Medicare and Medicaid Services.

(b) Any monies becoming due under the Workers' Compensation Law.

HISTORY: Laws, 2013, ch. 512, § 5; reenacted without change, Laws, 2016, ch. 394, § 5, eff from and after July 1, 2016; reenacted without change, Laws, 2019, ch. 425, § 5, eff from and after July 1, 2019.

§ 85-7-311. Effect of Sections 85-7-301 through 85-7-315 on settlement before entry into qualifying hospital.

No settlement or release entered into or executed before the entry of the injured party into the qualifying hospital shall be affected by or subject to the terms of Sections 85-7-301 through 85-7-315.

HISTORY: Laws, 2013, ch. 512, § 6; reenacted without change, Laws, 2016, ch. 394, § 6, eff from and after July 1, 2016; reenacted without change, Laws, 2019, ch. 425, § 6, eff from and after July 1, 2019.

§ 85-7-313. No independent right of action to determine liability for injuries.

Sections 85-7-301 through 85-7-315 shall not be construed to give any qualifying hospital or qualifying practice an independent right of action to determine liability for injuries sustained by a person or firm.

HISTORY: Laws, 2013, ch. 512, § 7; reenacted without change, Laws, 2016, ch. 394, § 7, eff from and after July 1, 2016; reenacted without change, Laws, 2019, ch. 425, § 7, eff from and after July 1, 2019.

§ 85-7-315. False affidavit required by Section 85-7-307 as perjury.

Any person who gives any false affidavit as provided by Section 85-7-307 commits the offense of perjury.

HISTORY: Laws, 2013, ch. 512, § 8; reenacted without change, Laws, 2016, ch. 394, § 8, eff from and after July 1, 2016; reenacted without change, Laws, 2019, ch. 425, § 8, eff from and after July 1, 2019.

§ 85-7-317. Repealed.

Repealed by Laws, 2019, ch. 425, § 9, eff from and after July 1, 2019.

§ 85-7-317. [Laws, 2013, ch. 512, § 9; Laws, 2016, ch. 394, § 9, eff from and after July 1, 2016.]

Editor's Note — Former § 85-7-317 repealed §§ 85-7-301 through 8-7-315, effective July 1, 2019.

ARTICLE 21.

SPECIAL LIENS ON REAL ESTATE OR OTHER PROPERTY.

Sec.

85-7-401.	Definitions.
85-7-403.	Special lien on real estate or other property for labor, services or materials furnished.
85-7-405.	Creation and declaration of lien; requisite statement and notice; payment action; amendment of claim of lien; priority of liens.
85-7-407.	Contractors to furnish list of all subcontractors and materialmen upon written request of property owner; information to be provided by persons not having privity of contract with contractor; applicability of section.
85-7-409.	Limitation of recovery of subcontractors against single-family residential homeowner.
85-7-411.	Attachment of liens to buildings or improvements on leased property.
85-7-413.	Dissolution of special liens.
85-7-415.	Discharge of lien by filing bond.
85-7-417.	Privileges and benefits of partnerships, corporations or associations with respect to special liens on real estate.
85-7-419.	Waiver and release of lien or bond claim.
85-7-421.	Expiration of claim of lien if payment action not timely filed; filing cancellation of fully satisfied lien.
85-7-423.	Shortening the time prescribed in which to file payment action.

Sec.
85-7-425. Computation of time.
85-7-427. Enforcement of judgments by special writ of execution.
85-7-429. Liability for falsely and knowingly filing claim of lien without just cause.
85-7-431. Payment bond as substitution for subcontractor or materialmen liens.
85-7-432. Private project construction bonds; requirements; right to sue; right of action; persons protected by payment bond.
85-7-433. Forms; interim waiver and release upon payment; waiver and release upon final payment; affidavit of nonpayment; notice of contest of lien; pre-lien notice to owner.

§ 85-7-401. Definitions.

The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Business day" means any day that is not a Saturday, Sunday, or legal holiday.

(b) "Contractor" means a contractor having privity of contract with the owner or lessee of the real estate.

(c) "Lien action" means a civil action against the owner of improved property to perfect and make permanent the lien created by Section 85-7-403.

(d) "Payment action" means a lawsuit, proof of claim in a bankruptcy case, or a binding arbitration.

(e) "Professional surveyor" has the meaning given in Section 73-13-71.

(f) "Materials" means materials, tools, appliances, machinery, or equipment used in making improvements to the real estate.

(g) "Materialmen" or "materialman" means all persons furnishing the materials, tools, appliances, machinery, or equipment included in the definition of materials to a contractor or to a subcontractor in privity with the contractor.

(h) "Professional engineer" has the meaning given in Section 73-13-3.

(i) "Residential property" means single-family and two-family, three-family, and four-family residential real estate.

(j) "Statutory overnight delivery" means delivery of a document through the United States Postal Service or through a commercial firm that is regularly engaged in the business of document delivery or document and package delivery in which the sender:

(i) Has directed that delivery be not later than the next business day following the day on which the document is received for delivery by the United States Postal Service or the commercial firm; and

(ii) Receives a receipt acknowledging receipt of the document signed by addressee or an agent of the addressee.

(k) "Subcontractor" means subcontractors having privity of contract with the contractor; "subcontractor" also means subcontractors having privity of contract with a subcontractor having privity of contract with the contractor.

(*l*) "Registered architect" has the meaning given in Section 73-1-3.

(m) "Design professional" includes professional surveyors, professional engineers and registered architects.

HISTORY: Laws, 2014, ch. 487, § 1, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-403. Special lien on real estate or other property for labor, services or materials furnished.

(1) The following persons shall each have a special lien on the real estate or other property for which they furnish labor, services or materials:

(a) All contractors, all subcontractors and all materialmen furnishing material for the improvement of real estate;

(b) All registered architects or professional engineers furnishing plans, drawings, designs, or other architectural or engineering services on or with respect to any real estate;

(c) All registered land surveyors performing or furnishing services on or with respect to any real estate.

(2) Each special lien specified in subsection (1) of this section may attach to the real estate of the owner for which the labor, services or materials are furnished if they are furnished at the instance of the owner, design professional or contractor or a subcontractor having direct privity of contract with a contractor, and shall include the value of work done and labor, services or materials furnished.

(3) Each special lien specified in subsection (1) of this section shall be limited to the amount due and owing the lien claimant under the terms of its express or oral contract, subcontract or purchase order subject to Section 85-7-405(4).

(4) Each special lien specified in subsection (1) of this section shall include interest on the principal amount due in accordance with Section 75-17-1, 75-17-7 or 75-17-19 as applicable by law.

(5) Notwithstanding any other provision of this article, no lien shall exist in favor of any contractor or subcontractor who is not licensed as required by either Section 31-3-1 et seq., or Section 73-59-1 et seq., or who contracts with any contractor or subcontractor who is not licensed as required. Upon request, any contractor or subcontractor is required to provide any owner, contractor, subcontractor or materialman a copy of that person's current license.

HISTORY: Laws, 2014, ch. 487, § 2, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-405. Creation and declaration of lien; requisite statement and notice; payment action; amendment of claim of lien; priority of liens.

(1) To make good a lien created in Section 85-7-403(1), it must be created and declared in accordance with the following provisions, and on failure of any of them the lien shall not be effective or enforceable:

(a) A substantial compliance by the party claiming the lien with the party's contract, subcontract or purchase order for work performed or labor, services or material provided in the building, repairing, or improving of real estate; for architectural services furnished; for registered land surveying or registered professional engineering services furnished or performed; or for materials or machinery furnished;

(b) The filing for record of the claim of lien in the office of the clerk of the chancery court of the county where the property is located within ninety (90) days after the claimant's last work performed, labor, services or materials provided, the furnishing of architectural services, or the furnishing or performing of surveying or engineering services. The lien shall include a statement regarding its expiration pursuant to Section 85-7-421(1) and a notice to the owner of the property on which a claim of lien is filed that the owner has the right to contest the lien; the absence of the statement or notice shall invalidate the lien. The claim shall be in substance as follows:

"A.B., a mechanic, contractor, subcontractor, materialman, machinist, manufacturer, registered architect, registered forester, registered land surveyor, registered professional engineer, or other person (as the case may be) claims a lien in the amount of (specify the amount claimed) on the building, structure, house, factory, mill, machinery, or railroad (as the case may be) and the premises or real estate on which it is erected or built, of C.D. (describing the houses, premises, real estate, or railroad), for satisfaction of a claim which became due on (specify the date the claim was due, which is the same as the last date the labor, services or materials were supplied to the premises) for work performed or labor, services provided (or whatever the claim may be).

THIS CLAIM OF LIEN EXPIRES AND IS VOID ONE HUNDRED EIGHTY (180) DAYS FROM THE DATE OF FILING OF THE CLAIM OF LIEN IF A PAYMENT ACTION IS NOT FILED BY THE CLAIMANT WITHIN THAT TIME PERIOD.

NOTICE TO OWNER OF PROPERTY: You have the right to contest this claim of lien pursuant to Mississippi law."

No later than two (2) business days after the claim of lien is filed of record, the lien claimant shall send a true and accurate copy of the claim of lien by registered or certified mail or statutory overnight delivery to the owner of the property or, if the owner's address cannot be found, the contractor, as the agent of the owner; if the property owner is an entity on file with the Secretary of State's office, sending a copy of the claim of lien to the entity's address or the registered agent's address shall satisfy this requirement. If the lien claimant is not the contractor, he shall also send a copy of the claim of lien within two (2) business days by registered or certified mail or statutory overnight delivery to the contractor or to the contractor's registered agent.

(c)(i) A payment action for the recovery of the amount of the lien claimant's claim against the party he contracted with shall be commenced in county, circuit or chancery court within one hundred eighty (180) days from the date of filing for record of the lien claimant's claim of lien. A lis pendens notice shall be filed with the commencement of the action with a copy to the owner and contractor;

(ii) The payment action shall be commenced by summons and complaint. The defendants shall be summoned, as in other actions at law, to appear and defend the action; and in case any necessary party defendant shall be a nonresident of or absent from the state, or cannot be found, he may be made a party by publication, as in cases of nonresident or absent defendants in chancery, requiring him to appear on a day to be therein named; and in default of appearance, the same proceedings shall be had as if the defendant had been duly summoned and made default;

(iii) Nothing in this paragraph (c) shall prejudice the parties' contractual rights to arbitration, as applicable;

(d)(i) The commencement of a payment action under paragraph (c) is not required if the owner has not made payment to the contractor and the lien claimant cannot secure a final judgment against the party with whom the lien claimant contracted because:

1. The party has been adjudicated a bankrupt;
2. If an individual, the party is deceased; or
3. Payment is not due to the lien claimant under the applicable contract agreement until after payment is received by the party with whom the lien claimant contracted.

(ii) If paragraph (d) (i) of this section applies, the person or persons furnishing labor, services or materials may enforce the lien directly against the property in a lien action against the owner if it is filed within the required time for filing a payment action, with the judgment rendered in the proceeding to be limited to a judgment in rem against the property improved and to impose no personal liability upon the owner of the property. A lis pendens notice shall be filed with the commencement of this lien action with a copy to the owner and the contractor.

(iii) Nothing in this paragraph (d) shall impact or negate the rights and defenses available pursuant to Section 85-7-413 or 85-7-419.

(e) A claim of lien may be amended at any time to increase or reduce the amount claimed, and the amended claim of lien shall relate back to the date of filing for record of the original claim of lien. An amended claim of lien filed for record pursuant to this subsection shall be sent to the owner of the property in the same manner as required for a claim of lien in subsection (1)(b) of this section and shall be in substance as follows:

"That certain claim of lien filed by A.B. against property of C.D. on (date) and recorded at book (book#), page (page#) in the lien index of (name of county)

County is hereby amended by increasing/reducing (cross out one) the amount of the claim of lien to (specify reduced amount claimed). The remaining terms of the original claim of lien are hereby incorporated by reference into this amended claim of lien. This amended claim of lien relates back to the date that the original claim of lien was filed for record."

(2)(a) The liens specified in Section 85-7-403 ("construction liens") shall be inferior to liens for taxes, but construction liens shall be superior in priority to all other liens except as specified in subsection (2)(b) and (c).

(b) Except as provided in subsection (2)(c), a construction lien shall have priority over all other liens, deeds of trust, mortgages or encumbrances filed after the date and time of the filing of the notice of lien in the office of the chancery clerk of the county in which the land is located. All liens, deeds of trust, mortgages and encumbrances filed before the date and time of the filing of the notice of construction lien shall have priority over the construction lien, whether the work secured by the lien was performed before or after the filing of the lien, deed of trust, mortgage or other encumbrance. This priority will extend to amendments or restatements and assignments of the lien, deed of trust, mortgage and other encumbrance. The priorities in this subsection are determined by the date and time of filing and without regard to the actual knowledge of the parties of unrecorded liens. Enforcement of a construction lien shall not affect any prior deeds of trust or other liens, and a purchaser, in connection with the enforcement of a construction lien, shall take the property subject to any prior liens, deeds of trust, mortgages or encumbrances of which the purchaser has actual or constructive notice on the date of the purchase. Foreclosure of any prior deeds of trust or other liens shall terminate and extinguish the subordinate construction lien or other interest as to the land and the buildings and improvements thereon, whether or not at the time of the foreclosure the construction lien or interest has been perfected in accordance with the provisions of this article, and the subordinate lienholder shall have the rights in any excess proceeds received by the foreclosing lienholder as provided by law.

(c) A deed of trust, mortgage, assignment of leases and rents, fixture filing or other security agreement affecting real property is a construction mortgage to the extent it secures a loan or loans for the purpose of financing the repair or construction of an improvement on the real property, which may include the acquisition cost of the real property. A construction lien is subordinate to a construction mortgage if the construction mortgage is filed in the land records before a notice of a claim of lien is filed pursuant to Section 85-7-405 and the lender, secured party, mortgagee, beneficiary or holder of the construction mortgage obtained either: (i) an affidavit or sworn statement from the owner to the effect that no work has been performed on, or materials delivered to, the real property; or (ii) an affidavit or sworn statement from the contractor, or owner if there is no contractor, as provided in Section 85-7-413(1) (b) regarding payment for work, materials or services provided. A construction mortgage has this priority for all loan advances secured thereby regardless of whether the advances are made before or after the filing of a notice of a construction lien, and this priority will extend to amendments, restatements and refinancings of the construction mortgage.

(3)(a) Following compliance with the requirements of subsection (1) of this section, in any proceeding against the owner to enforce a lien created by Section 85-7-403 against the property, the party having a direct contractual relationship with the lien claimant shall not be a necessary party, but may be made a party. The design professional, contractor or subcontractor, or all of them, may intervene in the proceedings at any time before judgment for the purpose of resisting the establishment of the lien or of asserting against the lien claimant any claim of the contractor or subcontractor growing out of or related to the contract, subcontract or purchase order upon which the asserted lien is based.

(b) Any party to an action against the owner to enforce a lien against the property, by appropriate plea, may put in issue the fact of indebtedness or the existence of the lien, or both, and may interpose any other defense or join any counterclaim applicable to the action; and if the court by its finding, or the jury by their verdict, as the case may be, ascertain that the plaintiff has a lien as claimed, judgment shall be entered for the amount secured thereby, plus interest and costs, against the party liable for the same.

(c) The court, in its discretion, may award reasonable costs, interest and attorney's fees to the prevailing party in an action against the owner to enforce a lien against the property.

(d) All liens arising under Section 85-7-403 shall have an equal priority, and be first paid out of the proceeds of the sale of the property, or money collected from the owner; and if the proceeds and money are insufficient to satisfy the liens in full, the proceeds and money shall be distributed pro rata among the claimants thereof or as otherwise ordered by the court.

(4) In no event shall the aggregate amount of liens created by Section 85-7-403 exceed the contract price as determined by the terms of the contract or other agreement between the owner and contractor for the improvements made or services performed.

(5)(a) If payments have been made in reliance upon either lien waivers issued by lien claimants pursuant to Section 85-7-413(1) (a) or sworn written statements of the contractor pursuant to Section 85-7-413(1) (b), the aggregate amount of liens created by Section 85-7-403 in favor of subcontractors and materialmen who are not in privity of contract with the owner shall not exceed the unpaid balance of the contract price under the terms of the contract or agreement between the owner and the contractor at the time the first notice of lien is filed pursuant to this section.

(b) If payments have been made in reliance upon either lien waivers issued by lien claimants pursuant to Section 85-7-413(1) (a) or sworn written statements of the contractor pursuant to Section 85-7-413(1) (b), the aggregate amount of liens created by Section 85-7-403 in favor of design professionals who are not in privity of contract with the owner shall not exceed the unpaid balance of the contract price under the terms of the contract or agreement between the owner and the design professional who is in privity of contract with the owner at the time the first notice of lien is filed pursuant to this section.

HISTORY: Laws, 2014, ch. 487, § 3, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

JUDICIAL DECISIONS

1. Interpretation.

Chancellor properly interpreted and applied Miss. Code Ann. § 85-7-405 to deny a casino's petition to expunge a subcontractor's lien where the statute referenced only the date of the lien claimant's last work performed, and the subcontractor had provided labor, service, and/or material required by the contract and at the casino's direction within 90 days of the lien's filing. Land Holdings I, LLC v. GSI Servs., LLC, 265 So. 3d 147, 2019 Miss. LEXIS 25 (Miss. 2019).

§ 85-7-407. Contractors to furnish list of all subcontractors and materialmen upon written request of property owner; information to be provided by persons not having privity of contract with contractor; applicability of section.

(1) Upon the written request of the property owner by registered or certified mail or statutory overnight delivery, the contractor shall furnish to the owner a complete list of all subcontractors and materialmen and upon written request from the contractor, all subcontractors shall provide the same information. If the contractor or subcontractor willfully fails or refuses to furnish the list or to give the information to the owner or contractor within a reasonable time, he shall thereby forfeit his right to a lien under this article. Similarly, if the contractor or subcontractor fails to pay any materialman or subcontractor in direct privity with him in accordance with any contract, subcontract or purchase order specifically requiring him to do so, he shall thereby forfeit his right to a lien under this article.

(2) For any person having a right to a lien pursuant to Section 85-7-403 who does not have privity of contract with the contractor, or, if there is no contractor, with the owner, and is providing labor, services or materials for the improvement of property, within thirty (30) days following the first delivery of labor, services or materials to the property, the person shall give a written notice to the contractor, or, if there is no contractor, to the owner, either by e-mail with a confirmed receipt, registered or certified mail, or statutory overnight delivery setting forth the following:

(a) The name, address, and telephone number of the person providing labor, services or materials;

(b) The name and address of each person at whose instance the labor, services or materials are being furnished;

(c) The name of the project and location of the project to which labor, services or materials are provided; and

(d) A description of the labor, services or materials being provided and, if known, the contract price or anticipated value of the labor, services or materials to be provided.

If the person not in privity of contract with the contractor fails to provide the required notice to the contractor, he shall thereby forfeit his right to a lien under this article.

(3) When a claimant is requested to execute a waiver and release in exchange for or to induce the making of an interim or final payment in accordance with Section 85-7-419(2) or (3), and does so, if payment is made pursuant to the waiver and release and the design professional, contractor or subcontractor, without good cause, in turn willfully fails or refuses to pay the claimant the amount claimed as set forth in the waiver and release, then the design professional, contractor or subcontractor, as the case may be, shall be liable to the claimant in the amount of three (3) times the amount claimed on the face of the waiver and release. Good cause includes, but is not limited to, any defense available pursuant to the terms of the applicable contract, subcontract or purchase order.

(4) The provisions of this section do not apply to single-family residential construction.

HISTORY: Laws, 2014, ch. 487, § 4, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-409. Limitation of recovery of subcontractors against single-family residential homeowner.

(1) As to single-family residential construction only, payment made by or on behalf of the owner to a contractor or design professional in privity with the owner, for the work of a subcontractor, materialman, professional engineer or professional surveyor, shall be an absolute defense to any claim of lien made by the subcontractor, materialman, professional engineer or professional surveyor, (a) but only to the extent of the payment actually made by or on behalf of the owner to the contractor or design professional in privity with the owner, and (b) only to the extent the owner has not received a pre-lien notice in accordance with subsection (2) of this section before the payment.

(2) As to single-family residential construction only, as a condition precedent of any right to a special lien under Section 85-7-403 in favor of a subcontractor, materialman or design professional not in privity with the owner, the claimant must provide the owner a pre-lien written notice at least ten (10) days before filing a claim of lien under Section 85-7-405, which can be evidenced by any reliable means of delivery.

(3) The claimant's written notice required in subsection (2) shall be in substantially the same form as the Pre-Lien Notice set forth in Section 85-7-433(5).

HISTORY: Laws, 2014, ch. 487, § 5, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-411. Attachment of liens to buildings or improvements on leased property.

(1)(a) When the building or improvement is erected under or by virtue of any contract with a lessee in possession, and the erection thereof is not in violation of the terms or conditions of the lease, the lien shall attach to the building or improvement, and to the unexpired term of the lease, and the holder of the lien shall have the right to avoid a forfeiture of the lease by paying rent to the lessor, as it becomes due and payable, or by the performance of any other act or duty to which the lessee is bound.

(b) If the lien can be enforced by a sale of the building or improvement, the purchaser may, at his election, (i) become entitled to the possession of the demised premises, and to remain therein for the unexpired term, by paying rent to the lessor, or performing any other act or duty to which the lessee was bound, as if he were the assignee of the lease; or (ii) he may, within sixty (60) days after the sale, remove the building or improvement from the premises, but only to the extent that it is detachable from the real property without injury to the real property; and if he elects to take possession and to remain therein until the expiration of the term of the lease, he may, within a reasonable time after the expiration of the term, remove the building or improvement from the premises, but only to the extent that it is detachable from the real property without injury to the real property.

(c) If, before a sale, the holder of the lien has made any payments of rent, or other pecuniary compensation to the lessor, which ought to have been paid by the lessee, he shall be reimbursed for the payments from the proceeds of the sale.

(2) When a lien attaches under subsection (1) of this section, the lessor, at any time before a sale of the property, shall have a right to discharge the lien by paying to the holder the amount secured thereby, including costs and all monies he may have paid to the lessor to prevent a forfeiture of the lease, and, after a sale, he shall have the right to prevent the removal of the building or improvement from the premises by paying to the purchaser the value of the building or improvement; and upon the payment, either to the holder of the lien or to the purchaser, the building or improvement shall become the property of the lessor.

(3) Notwithstanding subsections (1) and (2) of this section, unless done by the written consent of the owner, only the building or improvements erected,

and then only to the extent that they are detachable from the real property without injury to the real property, as well as the estate of the tenant in the land, shall be subject to the lien.

HISTORY: Laws, 2014, ch. 487, § 6, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

JUDICIAL DECISIONS

ANALYSIS

1. Liability generally.
2. Contracts by non-owning spouse.
3. Enforcement of lien.

1. Liability generally.

A contractor had both an equitable and a statutory lien on a house that it built, even though, unbeknownst to the contractor, the promissory note and deed of trust granting it such liens had been executed by relatives of the true property owner, where the property owner had permitted and acquiesced in the construction of the house on his land and the occupancy thereof by his relatives, who had defaulted on the note. Jim Walter Corp. & Mid-State Homes, Inc. v. Gates, 370 So. 2d 928, 1979 Miss. LEXIS 2027 (Miss. 1979).

Holders of vendor's lien, not being "owners " within statute limiting lien, unless alterations are made with owner's written consent, need not consent in writing to waive lien. Azwell v. Mohamed, 164 Miss. 80, 143 So. 863, 1932 Miss. LEXIS 228 (Miss. 1932).

Building erected on lot by owners was subject to lien for materials furnished at instance and request of one of owners, though charged to third person's account; however, material furnished to person other than owner for partial construction of building will not support lien on building, although furnished with owner's knowledge and consent. Stubbs v. Capital Paint & Glass Co., 160 Miss. 832, 131 So. 806, 135 So. 945, 1931 Miss. LEXIS 122 (Miss. 1931).

Structure alone erected by person not owner of land may be subject to mechanic's lien, if detachable from original building without injury to latter. Maryland Casualty Co. v. Adams, 159 Miss. 88, 131 So. 544, 1931 Miss. LEXIS 10 (Miss. 1931).

Statute subjecting to mechanic's lien only house, building, etc., erected, constructed, etc., at instance of one not owner of land, unless done by owner's written consent, was not invalid as depriving owner of property without due process. Chears Floor & Screen Co. v. Gidden, 159 Miss. 288, 131 So. 426, 1930 Miss. LEXIS 374 (Miss. 1930).

Any fixture erected or installed by person not owner of land, as well as alterations and repairs on building made by one other than owner, may be subject of mechanic's lien, if detachable from building without injury; but materialman or laborer could not acquire lien on improvement made by mere trespasser without any interest in property, possessory or otherwise. Chears Floor & Screen Co. v. Gidden, 159 Miss. 288, 131 So. 426, 1930 Miss. LEXIS 374 (Miss. 1930).

Entire house, constructed by person not owner of land, may be subject to mechanic's lien, but not lot, unless work was done with owner's written consent. Chears Floor & Screen Co. v. Gidden, 159 Miss. 288, 131 So. 426, 1930 Miss. LEXIS 374 (Miss. 1930).

2. Contracts by non-owning spouse.

Residence constructed by wife on lot owned by her was not subject to lien for materials furnished on husband's account, in view of circumstances under which materials were furnished. Stubbs v. Capital Paint & Glass Co., 160 Miss. 832, 131 So.

806, 135 So. 945, 1931 Miss. LEXIS 122 (Miss. 1931).

Statute, if construed to create mechanic's lien on entire residence owned by wife for materials furnished husband on his own account in constructing additional room, would be unconstitutional as taking property without due process. Chears Floor & Screen Co. v. Gidden, 159 Miss. 288, 131 So. 426, 1930 Miss. LEXIS 374 (Miss. 1930).

Wife's property was not liable for material used in erection of building on her land, purchased by husband without her consent. Schiaffino v. Christ, 96 Miss. 801, 51 So. 546, 1910 Miss. LEXIS 185 (Miss. 1910).

Where a contract for plumbing on the separate property of the wife is made with the husband and on his credit, without the written consent of the wife, her property cannot be held liable. O'Gwinn v. Winner, 25 So. 354 (Miss. 1899).

3. Enforcement of lien.

A lumber contractor who made home improvements with the owners' knowledge and consent but without their written permission was entitled to a lien to cover the cost of improvements for which the price had not been paid only to the extent that the improvements could be removed without damaging the owners' interest in the house where an oral construction contract was negotiated with the daughter of the owners who, although she lived in the house and made payments to her parents equivalent to mortgage payments, was neither the beneficiary of a resulting trust in the house nor the vendee of an enforceable contract of sale, and thus, had no interest in the house to which the lien could attach. Brown v. Gravlee Lumber Co., 341 So. 2d 907, 1977 Miss. LEXIS 2282 (Miss. 1977).

Where the owner of a service station did not consent either expressly or impliedly to the erection of the awning at the service station, the seller could not enforce lien on the building or on the land. Jay Industries, Inc. v. Powell, 220 Miss. 372, 71 So. 2d 193, 1954 Miss. LEXIS 449 (Miss. 1954).

Where the original lessee had assigned its leasehold interest to another, who in turn rented to a person who incurred a debt upon which a mechanic's lien was attempted to be enforced, the original lessee was not a necessary and indispensable party to the suit. Jay Industries, Inc. v. Powell, 220 Miss. 372, 71 So. 2d 193, 1954 Miss. LEXIS 449 (Miss. 1954).

The owner of the leasehold interest upon which a mechanic's lien is sought to be enforced is a necessary party to the suit. Jay Industries, Inc. v. Powell, 220 Miss. 372, 71 So. 2d 193, 1954 Miss. LEXIS 449 (Miss. 1954).

In an action against sublessee and owner of service station by seller of metal awning which was installed at the request of sublessee, the question of whether the awning could be detached and removed from the service station without impairment and damage to the premises, was for the jury. Jay Industries, Inc. v. Powell, 220 Miss. 372, 71 So. 2d 193, 1954 Miss. LEXIS 449 (Miss. 1954).

Where husband contracted for erection of building on wife's land, materialman, to enforce his lien against building alone, must make wife and contractor parties. Flake v. Central Hardware Co., 96 Miss. 838, 51 So. 461, 1910 Miss. LEXIS 178 (Miss. 1910).

§ 85-7-413. Dissolution of special liens.

(1) The special lien specified in Section 85-7-403(1) shall be dissolved and unenforceable if the owner, purchaser from owner, or lender providing construction or purchase money or any other loan secured by real estate shows that:

(a) Payment or release of funds was made by the owner, purchaser or lender in reliance upon a lien waiver issued by the lien claimant pursuant to Section 85-7-419; or

(b) Payment or release of funds was made by the owner, purchaser or lender in reliance upon a sworn written statement of the contractor that the agreed price or reasonable value of the labor, services or materials has been paid or waived in writing by the lien claimant. If the sworn written statement, as required by this paragraph (b), is falsely and knowingly made, then all parties injured thereby shall have a right of action against the maker of the sworn written statement for damages in the amount of three (3) times their actual damages sustained on account of the willfully and falsely made sworn written statement.

(2) In a lien action, the owner of the improved real estate shall have a defense to the extent of any payment for the work, materials or services that are the subject of the lien made to a contractor or design professional in privity of contract with the owner or to a subcontractor in good-faith reliance upon receipt of a lien waiver pursuant to subsection (1)(a), or upon receipt of a sworn written statement pursuant to subsection (1)(b), and before receipt of notice of the filing by the lien claimant of a notice of lien pursuant to Section 85-7-405 or an affidavit of nonpayment pursuant to Section 85-7-419(5)(b).

HISTORY: Laws, 2014, ch. 487, § 7, eff from and after passage (approved Apr. 11, 2014).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (1)(b) by substituting "this paragraph (b)" for "the paragraph (b)." The Joint Committee ratified the correction at its August 20, 2021, meeting.

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:

"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-415. Discharge of lien by filing bond.

(1) When any person entitled under this article to claim a lien against any real estate located in this state files a lien in the office of the clerk of the chancery court of the county in which the real estate is located, the owner of the real estate or the contractor or subcontractor employed to improve the property may, before or after foreclosure proceedings are instituted, discharge the lien upon the approval of a bond by the clerk of the chancery court. The bond shall be conditioned to pay to the holder of the lien the sum that may be found to be due the holder upon the trial of any payment action that may be filed by the lienholder to recover the amount of the claim within one hundred eighty (180) days from the time the claim of lien is filed or as otherwise required by Section 85-7-423. The bond shall be one hundred ten percent (110%) of the amount claimed under that lien and shall be either a cash bond or a bond with good security approved by the clerk of the chancery court and issued by any surety company authorized to do business in the State of Mississippi. Upon approval by the clerk of the bond, the real estate shall be discharged from the lien.

(2) Within seven (7) days of filing the bond required by subsection (1) of this section and any attachments, the party filing the bond shall send a notice

of filing the bond and a copy of the bond by registered or certified mail or statutory overnight delivery to the lien claimant at the address stated on the lien or, if no address is shown for the lien claimant, to the person shown as having filed the lien on behalf of the claimant at the indicated address of the person and, if the bond is filed by a contractor or subcontractor, to the owner of the property and the contractor; however, if the lien claimant or the owner or contractor is an entity on file with the Secretary of State's office, sending the notice of filing the bond and a copy of the bond to the company's address or the registered agent's address on file with the Secretary of State shall be deemed sufficient; failure to send the notice of filing the bond and copy of the bond shall not invalidate the bond for purposes of discharge of a claim of lien under this section. With respect to bonds secured by property, the clerk shall not accept any real property bond unless the real property is scheduled in an attached affidavit setting forth a description of the property and indicating the record owner thereof, including any liens and encumbrances and amounts thereof, the market value, and the value of the sureties' interest therein, which affidavit shall be executed by the owner or owners of the interest; the bond and affidavit shall be recorded in the same manner and at the same cost as other deeds of real property. So long as the bond exists, it shall constitute a lien against the property described in the attached affidavit.

(3) The clerk of the chancery court shall have the right to rely upon the amount specified in the claim of lien in determining the sufficiency of any bond to discharge under this section. The failure to specify both the amount claimed due under the lien and the date the claim was due shall result in the lien not constituting notice for any purposes.

(4) The clerk of the chancery court shall be held harmless for good faith regarding any discretionary act in connection with approval of any bond provided for in this section.

HISTORY: Laws, 2014, ch. 487, § 8, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:

"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-417. Privileges and benefits of partnerships, corporations or associations with respect to special liens on real estate.

If services are performed or furnished with respect to any real estate by any design professional who is a member of a partnership or who is an agent or employee of a corporation or an association and the contract for the services is made for or on behalf of the owner with the partnership or corporation or association, the partnership, corporation or association shall be entitled to all the privileges and benefits of Section 85-7-403, just as if the partnership, corporation or association were a design professional.

HISTORY: Laws, 2014, ch. 487, § 9, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-419. Waiver and release of lien or bond claim.

(1) A right to claim a lien or to claim upon a bond may not be waived in advance of furnishing of labor, services or materials. Any purported waiver or release of lien, bond claim or this article executed or made in advance of furnishing labor, services or materials is null, void and unenforceable.

(2) When a claimant is requested to execute a waiver and release in exchange for or in order to induce payment other than final payment, the waiver and release shall substantially follow the Interim Waiver and Release upon Payment form set forth in Section 85-7-433(1). The failure to correctly complete any of the blank spaces in the referenced form does not invalidate the form if the subject matter of the release reasonably may be determined.

(3) When a claimant is requested to execute a waiver and release in exchange for or in order to induce making of final payment, the waiver and release shall substantially follow the Waiver and Release upon Final Payment form set forth in Section 85-7-433(2). The failure to correctly complete any of the blank spaces in the referenced form does not invalidate the form if the subject matter of the release reasonably may be determined.

(4) Nothing contained in this section shall affect:

(a) The enforceability of any subordination of lien rights by a potential lien claimant to the rights of any other party which may have or acquire an interest in all or any part of the real estate or other property for which the potential lien claimant has furnished labor, services or material, even though the subordination is entered into in advance of furnishing labor, services or material, and even though the claimant has not actually received payment in full for its claim;

(b) The enforceability of any waiver of lien rights given in connection with the settlement of a bona fide dispute concerning the amount due the lien claimant for labor, services or material which have already been furnished; or

(c) The validity of a cancellation or release of a recorded claim of lien.

(5)(a) When a waiver and release provided for in this section is executed by the claimant, it shall be binding against the claimant for all purposes, subject only to payment in full of the amount set forth in the waiver and release.

(b) Amounts shall conclusively be deemed paid in full upon the earliest to occur of:

(i) Actual receipt of funds;

(ii) Execution by the claimant of a separate written acknowledgment of payment in full; or

(iii) Sixty (60) days after the date of the execution of the waiver and release, unless before the expiration of the sixty-day period the claimant files in the county in which the property is located an affidavit of nonpayment, using substantially the affidavit of nonpayment form set forth in Section 85-7-433(3), and sends a true and accurate copy of the affidavit of nonpayment to the owner of the property in the manner provided in Section 85-7-405 for sending a notice of a claim of lien to the owner.

(c) A claimant who is paid, in full, the amount set forth in the waiver and release form after filing an affidavit of nonpayment shall upon request execute in recordable form an affidavit swearing that payment in full has been received. Upon recordation thereof in the county in which the affidavit of nonpayment was recorded, the affidavit of nonpayment to which it relates shall be deemed void.

(d) Nothing in this section shall shorten the time within which to file a claim of lien.

(e) Except as provided in Section 85-7-413, a waiver and release provided in accordance with this section shall be suspended upon the filing of an affidavit of nonpayment until payment in full has been received. However, an affidavit of nonpayment shall not affect dissolution of the claimant's lien or the availability or enforceability of any owner's defenses pursuant to Section 85-7-413, if applicable.

(f) The claimant may rely upon the information contained in the waiver and release form when completing for filing the affidavit of nonpayment.

HISTORY: Laws, 2014, ch. 487, § 10, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-421. Expiration of claim of lien if payment action not timely filed; filing cancellation of fully satisfied lien.

(1) Failure of a lien claimant to commence a payment action to collect the amount of his or her claim within one hundred eighty (180) days from the date of filing the lien renders the claim of lien unenforceable. Any lien filed shall include on the face of the lien the following statement in at least 12 point bold font: "THIS CLAIM OF LIEN EXPIRES AND IS VOID ONE HUNDRED EIGHTY (180) DAYS FROM THE DATE OF FILING OF THE CLAIM OF LIEN IF A PAYMENT ACTION IS NOT FILED IN THAT TIME PERIOD." Failure to include the required language shall invalidate the lien and prevent it from being filed. No release or voiding of the liens shall be required. A lien shall expire sooner and be disregarded once it is determined that no notice of commencement was timely filed in response to a notice of contest pursuant to Section 85-7-423.

(2) Whenever any lien has been fully satisfied, the holder thereof shall file a cancellation of it in the record in the office of the chancery clerk.

(3) Any holder of a lien, who, after having been fully paid, fails for fifteen (15) days after demand in writing to file a cancellation as provided in subsection (1) of this section, shall be liable to any person thereby injured for the amount of the injury, which shall not be less than Five Hundred Dollars ($500.00) per day that the required cancellation is not timely filed, plus reasonable attorney's fees and costs.

HISTORY: Laws, 2014, ch. 487, § 11, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-423. Shortening the time prescribed in which to file payment action.

(1) An owner or an owner's agent or attorney, or the contractor or contractor's agent or attorney, may elect to shorten the time prescribed in which to commence a payment action to enforce any claim of lien by recording in the chancery clerk's office a notice in substantially the form set forth in Section 85-7-433(4), along with proof of delivery to the lien claimant.

(2) The clerk of the chancery court shall cross-reference the notice of contest of lien to the lien. The owner or the owner's agent or attorney, or the contractor or the contractor's agent or attorney, shall send a copy of the notice of contest of lien by registered or certified mail or statutory overnight delivery to the lien claimant at the address noted on the face of the lien within seven (7) days of filing. Service shall be deemed complete upon mailing.

(3) The lien shall be extinguished by law upon the earlier of ninety (90) days after the filing of the notice of contest of lien, or one hundred eighty (180) days from the date of lien filing if no payment action is filed in that time period. No release or voiding of the liens shall be required. This subsection shall not be construed to extend the time in which a payment action must begin.

HISTORY: Laws, 2014, ch. 487, § 12, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-425. Computation of time.

The computation of time under this article shall be determined pursuant to Section 1-3-67.

HISTORY: Laws, 2014, ch. 487, § 13, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-427. Enforcement of judgments by special writ of execution.

(1) Judgments establishing the lien, and ordering the property sold for the satisfaction thereof, may be enforced by special writ of execution as set forth in Section 85-7-153.

(2) The delivery of possession by the person claiming the lien shall not affect his lien.

HISTORY: Laws, 2014, ch. 487, § 14, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-429. Liability for falsely and knowingly filing claim of lien without just cause.

(1) Any person who shall falsely and knowingly file the claim of lien provided in this article without just cause shall be liable to every party injured thereby for a penalty equal to three (3) times the full amount for which the claim was filed, to be recovered in an action by any party so injured at any time within one hundred eighty (180) days from the filing of the claim of lien.

(2) Any person whose rights may be adversely affected by wrongful filing of a claim of lien, as provided by this article may, in addition to the remedies set forth in subsection (1) of this section, apply, upon seven (7) days' notice, to the circuit, county or chancery court, to expunge or vacate the claim of lien, in accordance with Rule 81(d) (2) of the Mississippi Rules of Civil Procedure.

HISTORY: Laws, 2014, ch. 487, § 15, eff from and after passage (approved Apr. 11, 2014).

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-431. Payment bond as substitution for subcontractor or materialmen liens.

Where a contractor gives a payment bond providing payment protection to subcontractors and material suppliers to the full extent provided by the Mississippi Little Miller Act found at Section 31-5-51 or the private project bond provision at Section 85-7-432, the payment bond shall be in substitution for the liens provided for a subcontractor or materialman in this article. The contractor's right to a lien is not affected by the provision of a bond.

HISTORY: Laws, 2014, ch. 487, § 16, eff from and after passage (approved Apr. 11, 2014); Laws, 2019, ch. 346, § 2, eff from and after July 1, 2019.

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:
"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

§ 85-7-432. Private project construction bonds; requirements; right to sue; right of action; persons protected by payment bond.

(1) Any person entering into a formal contract for the construction, alteration, or repair of any private building or other private work, before entering into such contract, may furnish to the owner, bonds with good and sufficient surety in which case the bonds shall conform to the requirements of this chapter as follows:

(a) A performance bond shall be payable to, in favor of or for the protection of such owner, for the work to be done in an amount not less than the amount of the contract, conditioned for the full and faithful performance of the contract;

(b) A payment bond shall be payable to the owner but conditioned for the prompt payment of all persons supplying labor or material used in the execution of the work under the contract, for the use of each such person, in an amount not less than the amount of the contract; and

(c) The bonds herein provided for may be made by any surety company which is authorized to do business in the State of Mississippi and listed on the United States Treasury Department's list of acceptable sureties.

(2) Every person who has furnished labor or material used in the execution of the private work provided for in such contract, in respect of which a payment bond is furnished, and who has not been paid in full for such before the expiration of a period of ninety (90) days after the date on which the last of the labor was performed by him or her or the last of the materials was furnished by him or her and for which such claim is made, provided the same has been approved, where required, by the owner or its architect or engineers, or such approval is being withheld as a result of unreasonable acts of the contractor, shall have the right to sue on such payment bond for the amount, or the balance thereof that is due and payable, but unpaid at the time of institution of such suit and to prosecute said action to final execution and judgment. Notwithstanding anything to the contrary contained herein, if the amount claimed in such action is subject to contractual provisions or conditions, between the parties involved in such action, the action shall be abated pending the performance of such provisions and the fulfillment of such conditions.

(3) Any person having direct contractual relationship with a subcontractor, but no contractual relationship express or implied with the contractor furnishing the private work payment bond shall have a right of action upon the said payment bond upon giving written notice to said contractor within ninety

(90) days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be given in writing by the claimant to the contractor or surety at any place where the contractor or surety maintains an office or conducts business. Such notice may be personally delivered by the claimant to the contractor or surety, or it may be mailed by certified mail, return receipt requested, postage prepaid, or emailed with a receipt of a read receipt, to the contractor or surety. No such action may be maintained by any person not having a direct contractual relationship with the contractor principal, unless the notice required by this section shall have been given.

(4) The only persons protected by such payment bond, subject to the notice provisions of this section are:

(a) Subcontractors and material suppliers of the contractor;

(b) Sub-subcontractors and material suppliers of those subcontractors named in subsection (4)(a) of this subsection; and

(c) Laborers who have performed work on the project site.

(5)(a) When suit is instituted on a performance bond given in accordance with this chapter, it shall be commenced within one (1) year after the obligee shall have made final payment on the contract; provided, however, if the contract is abandoned by the general contractor as bond principal or is terminated by the bond obligee, suit shall be commenced within one (1) year after the earlier of the abandonment by the bond principal or termination by the bond obligee.

(b) When suit is instituted on a payment bond given in accordance with this chapter, it shall be commenced within one (1) year after the day on which the last of the labor was performed or material was supplied by the person bringing the action and not later.

(c) Any suit brought on a performance or payment bond given in accordance with this chapter shall be brought in the county in which the contract or some part thereof was performed or in the county in which service of process may be obtained upon either the principal or the surety on such bond. Service of process on the surety through the Commissioner of Insurance does not satisfy the venue requirement of this section.

(6) Any person supplying labor or materials for the execution of the work shall, upon a written request to the owner/obligee, or to the contractor/principal, be furnished promptly with a true and correct copy of the contract and bonds within thirty (30) days of the request or the recipient of the request shall thereafter become liable for reasonable attorney's fees and costs in any subsequent action under this section. The written request may be evidenced by any reliable means of delivery.

(7) Whenever any person supplying labor or material in the execution of the work brings an action on such payment bond and the trial judge finds that the defense raised to such action by the contractor or surety was not

reasonable, or not in good faith, or merely for the purpose of delaying payment, then the trial judge may, in his discretion, award the claimant a reasonable amount to be determined by the trial judge as claimant's attorney's fees in bringing such successful action. Likewise, if the trial judge finds that such action was brought by claimant without just cause or in bad faith, the trial judge may, in his discretion, award the contractor or surety a reasonable amount to be determined by the trial judge as attorney's fees for defending such action; provided, however, this section shall not affect the right of any person to recover attorney's fees where provided by contract or bond.

HISTORY: Laws, 2019, ch. 346, § 1, eff from and after July 1, 2019.

§ 85-7-433. Forms; interim waiver and release upon payment; waiver and release upon final payment; affidavit of nonpayment; notice of contest of lien; pre-lien notice to owner.

(1) The following form is the Interim Waiver and Release Upon Payment form referred to in Section 85-7-419:

INTERIM WAIVER AND RELEASE UPON PAYMENT

STATE OF MISSISSIPPI
COUNTY OF ________________

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY __________ (NAME OF CONTRACTOR) TO FURNISH __________ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _______ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF __________, COUNTY OF __________, AND IS OWNED BY __________ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

UPON THE RECEIPT OF THE SUM OF $_______, THE MECHANIC AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND THROUGH THE DATE OF __________ (DATE) AND EXCEPTING THOSE RIGHTS AND LIENS THAT THE MECHANIC AND/OR MATERIALMAN MIGHT HAVE IN ANY RETAINED AMOUNTS, ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID BUILDING OR PREMISES.

____
SIGNATURE
BY: ___________
(PRINT NAME)
ITS: ___________
(PRINT TITLE)

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE _______ DAY OF _______, 20____.

____
NOTARY PUBLIC

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED THE PAYMENT, SIXTY (60) DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN BEFORE THE EXPIRATION OF THE SIXTY-DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER SECTION 85-7-419, MISSISSIPPI CODE OF 1972.

(2) The following form is the Waiver and Release Upon Final Payment form referred to in Section 85-7-419:

WAIVER AND RELEASE UPON FINAL PAYMENT

STATE OF MISSISSIPPI
COUNTY OF ___________

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY ___________ (NAME OF CONTRACTOR) TO FURNISH _______ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS ___________ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF ___________, COUNTY OF ___________, AND IS OWNED BY ___________ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

UPON THE RECEIPT OF THE SUM OF $_______, THE MECHANIC AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID PROPERTY.

____
SIGNATURE
BY: ____________________
(PRINT NAME)
ITS: ____________________
(PRINT TITLE)

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE _______ DAY OF _______, 20_______.

____
NOTARY PUBLIC

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED THE PAYMENT, SIXTY (60) DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN BEFORE THE EXPIRATION OF THE SIXTY-DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER SECTION 85-7-419, MISSISSIPPI CODE OF 1972.

____
SIGNATURE
BY: ____________________
(PRINT NAME)
ITS: _______________
(PRINT TITLE)

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE _______ DAY OF _______, 20_______.

____
NOTARY PUBLIC

(3) The following form is the Affidavit of Nonpayment referred to in Section 85-7-419:

AFFIDAVIT OF NONPAYMENT

STATE OF MISSISSIPPI
COUNTY OF __________________

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY ___________ (NAME OF CONTRACTOR) TO FURNISH ___________ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS ___________ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF ______________, COUNTY OF ______________, AND IS OWNED BY ___________ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

PURSUANT TO SECTION 85-7-419 THE UNDERSIGNED EXECUTED A LIEN WAIVER AND RELEASE WITH RESPECT TO THIS PROPERTY DATED ______________, ____. THE AMOUNT SET FORTH IN THE WAIVER AND RELEASE ($__________) HAS NOT BEEN PAID, AND THE UNDERSIGNED HEREBY GIVES NOTICE OF THE NONPAYMENT.

THE ABOVE FACTS ARE SWORN TRUE AND CORRECT BY THE UNDERSIGNED.

____
SIGNATURE
BY: ______________________
(PRINT NAME)
ITS: ______________________
(PRINT TITLE)

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE _______ DAY OF _______, 20_______.

____
NOTARY PUBLIC

WITHIN TWO (2) DAYS OF FILING THIS AFFIDAVIT OF NONPAYMENT, THE FILING PARTY SHALL SEND A COPY OF THE AFFIDAVIT BY REGISTERED OR CERTIFIED MAIL OR STATUTORY OVERNIGHT DELIVERY TO THE OWNER OF THE PROPERTY. WHENEVER THE OWNER OF THE PROPERTY IS AN ENTITY ON FILE WITH THE SECRETARY OF STATE'S OFFICE, SENDING A COPY OF THE AFFIDAVIT TO THE COMPANY'S ADDRESS OR THE REGISTERED AGENT'S ADDRESS ON FILE WITH THE SECRETARY OF STATE SHALL BE DEEMED SUFFICIENT.

(4) The following form is the Notice of Contest of Lien form referred to in Section 85-7-423:

NOTICE OF CONTEST OF LIEN

STATE OF MISSISSIPPI
COUNTY OF ________________
TO: [NAME AND ADDRESS OF LIEN CLAIMANT]

YOU ARE NOTIFIED THAT THE UNDERSIGNED CONTESTS THE CLAIM OF LIEN FILED BY YOU ON __________ 20_______, AND RECORDED IN ________________ BOOK _______, PAGE _______ OF THE PUBLIC RECORDS OF _______ COUNTY, MISSISSIPPI, AGAINST PROPERTY OWNED BY __________, AND THAT THE TIME WITHIN WHICH YOU MAY COMMENCE A PAYMENT ACTION TO ENFORCE YOUR LIEN IS LIMITED TO NINETY (90) DAYS FROM RECEIPT OF THIS NOTICE. THIS _______ DAY OF _______, 20_______.

THIS ABOVE-REFERENCED LIEN WILL EXPIRE AND BE VOID IF YOU DO NOT: (1) COMMENCE A PAYMENT ACTION FOR RECOVERY OF THE AMOUNT OF THE LIEN CLAIM PURSUANT TO SECTION 85-7-405, MISSISSIPPI CODE OF 1972, WITHIN NINETY (90) DAYS FROM RECEIPT

OF THIS NOTICE; AND (2) FILE A LIS PENDENS NOTICE OF THE PAYMENT ACTION WITH THE CHANCERY CLERK UPON COMMENCEMENT OF THE PAYMENT ACTION WITH A COPY TO THE LIEN CLAIMANT, OWNER AND CONTRACTOR.

____
SIGNATURE
BY: ____________________
(PRINT NAME)
ITS: ____________________
(PRINT TITLE)

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE _______ DAY OF _______, 20_______.

____
NOTARY PUBLIC

(5) The following form is the Pre-Lien Notice form referred to in Section 85-7-409(3):

PRE-LIEN NOTICE TO OWNER

TO: [NAME AND ADDRESS OF OWNER]

TAKE NOTICE THAT THE UNDERSIGNED IS A PERSON HAVING A RIGHT TO A LIEN PURSUANT TO SECTION 85-7-403, MISSISSIPPI CODE OF 1972, WHO DOES NOT HAVE A DIRECT CONTRACT WITH THE OWNER, HAS PROVIDED LABOR, SERVICES OR MATERIALS FOR THE IMPROVEMENT OF PROPERTY COMMONLY KNOWN AS _______ ("THE PROPERTY"), FOR THE SUM OF $ _______ FOR WHICH THE UNDERSIGNED HAS NOT BEEN PAID, AND INTENDS TO FILE A CLAIM OF SPECIAL LIEN ON THE SUBJECT PROPERTY IN TEN (10) OR MORE DAYS FROM THE DATE HEREOF.

SO NOTIFIED, THIS THE _______ DAY OF _______, 20_______.

LIEN CLAIMANT: ____________________
(PRINT NAME)
BY: ____________________
(SIGNATURE)
ITS: ____________________
(PRINT TITLE)

HISTORY: Laws, 2014, ch. 487, § 17; Laws, 2015, ch. 348, § 1, eff from and after July 1, 2015.

Editor's Notes — Laws of 2014, ch. 487, § 25, provides:

"SECTION 25. The codifier is directed to codify Sections 1 through 17 as a separate article within Title 85, Chapter 7, Mississippi Code of 1972."

ARTICLE 23.

COMMERCIAL REAL ESTATE BROKER LIEN ACT.

Sec.
85-7-501. Short title.

Sec.
85-7-503. Definitions.
85-7-505. Commercial real estate lien.
85-7-507. When lien attaches to commercial real estate.
85-7-509. Lien notice, content.
85-7-511. Lien claimant to mail copy of notice of lien to owner(s) by certified mail.
85-7-513. Enforcing lien.
85-7-515. Complaint; content; parties' foreclosure action; procedure.
85-7-517. When lien claim release or satisfaction to be filed; extinguishment on certain conditions.
85-7-519. Cost of proceeding to be paid by nonprevailing party.
85-7-521. Discharge of lien.
85-7-523. Remedy for lien wrongly filed.
85-7-525. Priority of deeds of trust or mortgages, tax liens and other liens.
85-7-527. Repealed.

§ 85-7-501. Short title.

This article shall be known and may be cited as the "Commercial Real Estate Broker Lien Act."

HISTORY: Laws, 2014, ch. 522, § 1; reenacted without change, Laws, 2017, ch. 348, § 1, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:
"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

§ 85-7-503. Definitions.

As used in this article, the following terms have the following meanings:

(a) "Broker" means a real estate broker licensed pursuant to Section 73-35-3(1).

(b) "Broker services" means services for which a license issued by the Mississippi Real Estate Commission is required under Section 73-35-1 et seq.

(c) "Commercial real estate" means any real property or any and every interest or estate in land, including leaseholds, timeshares and condominiums, whether corporeal or incorporeal, freehold or nonfreehold, but excluding oil, gas or mineral leases and any other mineral leasehold, mineral estate or mineral interest of any nature whatsoever, which at the time the property or interest is made the subject of an agreement for broker services:

(i) Is lawfully used primarily for sales, office, research, institutional, warehouse, manufacturing, industrial or mining purposes or for multi-family residential purposes involving five (5) or more dwelling units; or

(ii) May lawfully be used for any of the purposes listed in this paragraph (c) by a duly enacted zoning ordinance or which is the subject of an official application or petition to amend the applicable zoning ordinance to permit any of the uses listed in this paragraph (c) which is under consideration by the government agency with authority to approve the amendment; or

(iii) Is in good faith intended to be immediately used for any of the purposes listed in this paragraph (c) by the parties to any contract, lease, option or offer to make any contract, lease, or option.

(d) "Compensation" means any compensation that is due a broker for performance of broker services.

(e) "Lien claimant" means a broker claiming a lien under this article.

(f) "Owner" means the owner of record of any interest in commercial real estate.

HISTORY: Laws, 2014, ch. 522, § 2; Laws, 2015, ch. 327, § 1; reenacted without change, Laws, 2017, ch. 348, § 2, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:
"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

§ 85-7-505. Commercial real estate lien.

(1) A broker shall have a lien upon commercial real estate in the amount that the broker is due under a written agreement for broker services signed by the owner or signed by the owner's duly authorized agent, if:

(a) The broker has performed under the provisions of the agreement;

(b) The written agreement for broker services clearly sets forth the broker's duties to the owner; and

(c) The written agreement for broker services sets forth the conditions upon which the compensation shall be earned and the amount of the compensation.

(2) The lien under this section shall be available only to the broker named in the instrument signed by the owner or the owner's duly authorized agent.

(3) A broker's lien is not valid or enforceable against a grantee or purchaser of an interest in the commercial real estate conveyed by the person owing the compensation if the grantee or purchaser is taking the property without existing tenants or leases covered by a written agreement for broker services if the deed or instrument transferring the interest is recorded before the broker's notice of lien is recorded.

HISTORY: Laws, 2014, ch. 522, § 3; reenacted without change, Laws, 2017, ch. 348, § 3, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:
"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

§ 85-7-507. When lien attaches to commercial real estate.

A lien authorized by this article attaches to the commercial real estate only when the lien claimant files a timely notice of the lien in the office of the chancery clerk in the county in which the commercial real estate is located. A notice of lien is timely if it is filed after the claimant's performance under the written agreement for broker services and before the conveyance or transfer of the commercial real estate that is the subject of the lien, except in cases where payments of compensation are due in installments or upon renewal. When payment of compensation to a broker is due in installments or upon renewal under the written agreement for broker services, a portion of which is due or may become due after the conveyance or transfer of the commercial real estate, a single claim for a lien filed before transfer or conveyance of the commercial real estate claiming all compensation due in installments or upon renewal shall be valid and enforceable for a period of one (1) year from the date of filing as it pertains to payments due after the transfer or conveyance; however, as payments or partial payments of compensation are received, the broker shall provide partial releases for those payments, thereby reducing the amount due the broker under the broker's lien. The notice of single claim for a lien may be renewed for a period of one (1) year by the filing of a renewal notice meeting the requirements of this article before the expiration of the expiring notice, and may be likewise renewed from year to year so long as installments of compensation or renewal compensation are due. Notwithstanding any notice of single claim for a lien filed, when payment of compensation to a broker is due in installments or contingent upon renewals under the written agreement for broker services, a portion of which is or would be due after the conveyance or transfer of the commercial real estate, any notice of lien for those payments due or becoming due after the transfer or conveyance may be recorded after the transfer or conveyance of the commercial real estate and within ninety (90) days of the date on which the payment is due; in that case the lien shall be effective as a lien against the transferee's interest in the commercial real estate as of the date filed and, in the case of a lease or transfer of a nonfreehold interest, the lien shall be effective as a lien against the owner's interest in the commercial real estate as of the date filed.

HISTORY: Laws, 2014, ch. 522, § 4; reenacted without change, Laws, 2017, ch. 348, § 4, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:
"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

§ 85-7-509. Lien notice, content.

(1) A lien notice under this article shall be signed by the lien claimant and shall contain an attestation by the lien claimant that the information contained in the notice is true and accurate to the best of the lien claimant's knowledge and belief.

(2) The lien notice shall include all of the following information:

(a) The name of the lien claimant;

(b) The name of the owner;

(c) A description of the commercial real estate upon which the lien is being claimed;

(d) The amount for which the lien is claimed and whether the amount is due in installments; and

(e) The claimant's grounds for the lien, including a reference to the written agreement for broker services that is the basis for the lien. It is not necessary that the written agreement for broker services be attached to the notice.

(3) The chancery clerk shall index properly filed liens in the "Notice of Construction Liens" record maintained in his office as provided under Section 85-7-133.

HISTORY: Laws, 2014, ch. 522, § 5; reenacted without change, Laws, 2017, ch. 348, § 5, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:
"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

§ 85-7-511. Lien claimant to mail copy of notice of lien to owner(s) by certified mail.

Any lien claimant who files a lien on commercial real estate under the provisions of this article shall mail a copy of the notice of the lien to the owner(s) of the commercial real estate by certified mail, return receipt requested, or shall serve a copy of the notice of the lien in accordance with any of the provisions for service of process set forth in the Mississippi Rules of Civil Procedure, as amended from time to time. The lien claimant shall file proof of service with the chancery clerk. The lien is void if the lien claimant does not file and serve the lien as provided in this section.

HISTORY: Laws, 2014, ch. 522, § 6; reenacted without change, Laws, 2017, ch. 348, § 6, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:
"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

§ 85-7-513. Enforcing lien.

A lien claimant may bring suit to enforce a lien that attaches under the provisions of this article in any court of competent jurisdiction in the county where the commercial real estate is located. The lien claimant shall begin proceedings within one (1) year after filing the notice of lien, and failure to begin proceedings within the one (1) year shall extinguish the lien. If a claim is based upon an option to acquire an interest in commercial real estate, the lien claimant shall begin proceedings within one (1) year of the option to purchase being exercised. A claim for the same lien extinguished under this section may not be asserted in any later proceeding. A lender shall not be made a party to any suit to enforce a lien under this article unless the lender has willfully caused the nonpayment of the compensation giving rise to the lien.

HISTORY: Laws, 2014, ch. 522, § 7; reenacted without change, Laws, 2017, ch. 348, § 7, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:
"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

§ 85-7-515. Complaint; content; parties' foreclosure action; procedure.

(1) A complaint filed under the provisions of this article shall contain all of the following:

(a) A statement of the terms of the written agreement for broker services on which the lien is based or a copy of the written contract or agreement;

(b) The date when the written agreement for broker services was made;

(c) A description of the services performed;

(d) The amount due and unpaid;

(e) A description of the property that is subject to the lien; and

(f) Any other facts necessary for a full understanding of the rights of the parties.

(2) The plaintiff shall file the action against all parties that have an interest of record in the commercial real estate; provided that a lender shall not be made a party to any suit to enforce a lien under this article unless the lender has willfully caused the nonpayment of the compensation giving rise to the lien. A foreclosure action for a lien claimed under this article shall be brought under the provisions of this section.

(3) Upon filing a complaint, the plaintiff shall file with the chancery clerk of each county where the commercial real estate, or any part thereof, is situated a lis pendens notice in accordance with Section 11-47-3.

HISTORY: Laws, 2014, ch. 522, § 8; reenacted without change, Laws, 2017, ch. 348, § 8, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:
"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

§ 85-7-517. When lien claim release or satisfaction to be filed; extinguishment on certain conditions.

If a notice of lien has been filed with the chancery clerk and the claim has been paid in full or in part, or if a condition occurs that would preclude the lien claimant from receiving compensation, in whole or in part, under the terms of the written agreement for broker services on which the lien is based, the lien claimant shall promptly, and in no event more than thirty (30) days after a properly served written demand of the owner, lienee, or other authorized agent, file with the chancery clerk and serve upon the owner(s) of record a written release, partial release or satisfaction of the lien. If a lien claimant fails to file a suit to enforce the lien within the time prescribed by this article or fails to file an answer in a pending suit to enforce a lien within thirty (30) days after a properly served written demand of the owner, lienee, or other authorized agent, the lien shall be extinguished. Service of the demand shall be by registered or certified mail, return receipt requested, or by personal service under the Mississippi Rules of Civil Procedure, as amended from time to time. The claimant shall promptly file proof of properly served written demand with the chancery clerk. The provisions of this section shall not extend to any other deadline provided by law for the filing of any pleadings or for the foreclosure of any lien governed by this article.

HISTORY: Laws, 2014, ch. 522, § 9; reenacted without change, Laws, 2017, ch. 348, § 9, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:
"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

§ 85-7-519. Cost of proceeding to be paid by nonprevailing party.

The costs of any proceeding brought to enforce a lien filed under this article, including reasonable attorneys' fees and prejudgment interest due to the prevailing party, shall be paid by the nonprevailing party or parties. If more than one (1) party is responsible for costs, fees and prejudgment interest, the costs, fees and prejudgment interest shall be equitably apportioned by the court among the responsible parties.

HISTORY: Laws, 2014, ch. 522, § 10; reenacted without change, Laws, 2017, ch. 348, § 10, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:
"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

§ 85-7-521. Discharge of lien.

Unless an alternative procedure is available and is acceptable to the transferee in a real estate transaction, any claim of lien on commercial real estate filed under this article may be discharged by any of the following methods:

(a) The lien claimant of record, the claimant's lawful agent, or the claimant's duly authorized attorney-in-fact, in the presence of the chancery clerk or a notary public, may acknowledge in writing the satisfaction of the claim of lien on the commercial real estate indebtedness and file the same with the chancery clerk, after which the chancery clerk shall enter on the record of the claim of lien on the commercial real estate the acknowledgment of satisfaction.

(b) The owner may exhibit an instrument of satisfaction signed and acknowledged by the lien claimant of record in the presence of the chancery clerk or a notary public, which instrument states that the claim of lien on the commercial real estate indebtedness has been paid or satisfied, after which the chancery clerk shall cancel the claim of lien on the commercial real estate by entry of satisfaction on the record of the claim of lien on the commercial real estate.

(c) By failure to enforce the claim of lien on the commercial real estate within the time prescribed by this article.

(d) By filing in the office of the chancery clerk the original or attested copy of a judgment or decree of a court of competent jurisdiction showing that the action by the claimant to enforce the claim of lien on the commercial real estate has been dismissed or finally determined adversely to the claimant.

(e) Whenever funds in an amount equal to one hundred twenty-five percent (125%) of the amount of the claim of lien on the commercial real estate are deposited with the chancery clerk to be applied to any payment finally determined to be due, after which the chancery clerk shall cancel the claim of lien on the commercial real estate. Thereafter, the lien of the claimant shall remain in place and be fully enforceable as to the funds deposited with the chancery clerk, but the lien upon the commercial real property shall be deemed released.

(f) Whenever a corporate surety bond, in an amount equal to one hundred twenty-five percent (125%) of the amount of the claim of lien on the commercial real estate and conditioned upon the payment of the amount finally determined to be due in satisfaction of the claim of lien on the commercial real estate is deposited with the chancery clerk, after which the chancery clerk shall cancel the claim of lien on the commercial real estate. Thereafter, the lien of the claimant shall remain in place and be fully enforceable as to the funds deposited with the chancery clerk, but the lien upon the commercial real property shall be deemed released.

(g) By failure to file a written release or satisfaction of a lien when required by this article or to timely file or take other action required by this article.

HISTORY: Laws, 2014, ch. 522, § 11; reenacted without change, Laws, 2017, ch. 348, § 11, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:

"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

§ 85-7-523. Remedy for lien wrongly filed.

Any broker who falsely and maliciously files or causes to be filed a notice of lien under this article that brings in question or disparages the title to property may be held liable in a civil action for damages, in which case damages shall be recoverable up to two (2) times the amount of monetary damages caused by the broker's false and malicious acts, in addition to any other damages.

HISTORY: Laws, 2014, ch. 522, § 12; reenacted without change, Laws, 2017, ch. 348, § 12, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:
"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

§ 85-7-525. Priority of deeds of trust or mortgages, tax liens and other liens.

All deeds of trust or mortgages, all purchase money mortgages and all liens for ad valorem taxes, regardless of when recorded, and all other liens afforded priority by law or recorded before the recording of the broker's lien provided by this article shall have priority over the broker's lien.

HISTORY: Laws, 2014, ch. 522, § 13; reenacted without change, Laws, 2017, ch. 348, § 13, eff from and after July 1, 2017.

Editor's Notes — Laws of 2014, ch. 522, § 15, provides:
"SECTION 15. This act shall take effect and be in force from and after July 1, 2014, and applies to written agreements signed by the owner of commercial real estate or the owner's duly authorized agent on or after that date."

§ 85-7-527. Repealed.

Repealed by Laws of 2017, ch. 348, § 14, effective July 1, 2017.
§ 85-7-527. [Laws, 2014, ch. 522, § 14, eff from and after July 1, 2014.]

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal statutory reference in (2) by substituting "this subsection" for "this paragraph." The Joint Committee ratified the correction at its August 20, 2021, meeting.

Editor's Notes — Former § 85-7-527 was the repealer for §§ 85-7-501 through 85-7-527, effective July 1, 2017.

CHAPTER 8.

UNIFORM FEDERAL LIEN REGISTRATION ACT

Sec.
85-8-1. Short title.
85-8-3. Application; exception.
85-8-5. Notice of lien; filing.
85-8-7. Certification of notice of lien.
85-8-9. Filing notice; duties and responsibilities.
85-8-11. Duties of chancery clerk.
85-8-13. Fees.
85-8-15. Interpretation and construction of Chapter.

§ 85-8-1. Short title.

This chapter may be cited as the Uniform Federal Lien Registration Act.

HISTORY: Laws, 1989, ch. 515, § 1, eff from and after January 1, 1990.

Comparable Laws from other States — Alabama: Code of Ala. §§ 35-11-42 through 35-11-48.
Alaska: Alaska Stat. §§ 40.19.010 through 40.19.050.
Arizona: A.R.S. §§ 33-1031 through 33-1035.
Arkansas: A.C.A. §§ 18-47-201 through 18-47-207.
California: Cal Code Civ Proc § 2107 et seq.
Colorado: C.R.S. 38-25-101 et seq.
Florida: Fla. Stat. § 713.901.
Hawaii: HRS § 505-1 et seq.
Idaho: Idaho Code § 45-201 et seq.
Illinois: 770 I.L.C.S. 110/1 through 110/7.
Iowa: Iowa Code § 331.609.
Kansas: K.S.A. §§ 79-2613 through 79-2619.
Louisiana: La. R.S. §§ 52:51 through 52:56.
Maine: 33 M.R.S. § 1901 et seq.
Maryland: Md. REAL PROPERTY Code Ann. § 3-401 et seq. (2011)
Michigan: M.C.L.S. §§ 211.661 to 211.668.
Minnesota: Minn. Stat. §§ 272.479 and 272.481 through 272.488.
Montana: Mont. Code Anno., § 71-3-201 et seq. (2010)
Nebraska: R.R.S. Neb. § 52-1001 et seq. (2010)
Nevada: Nev. Rev. Stat. Ann. §§ 108.825 through 108.837.
New Hampshire: R.S.A. § 454-B:1 through 454-B:10.
New Mexico: N.M. Stat. Ann. §§ 48-1-1 through 48-1-7.
New York: NY CLS Lien §§ 240 through 245.
North Carolina: N.C. Gen. Stat. § 44-68.10 et seq.
North Dakota: N.D. Cent. Code §§ 35-29-01 through 35-29-06.
Oklahoma: 68 Okl. St. §§ 3401 through 3407.
Oregon: O.R.S. § 87.806 et seq.
Pennsylvania: 74 P.S. §§ 157-1 through 157-8.
South Carolina: S.C. Code Ann. § 12-57-10 et seq.
Texas: Tex. Prop. Code § 14.001 et seq.
Virginia: Va. Code Ann. § 55.1-653 et seq.
Washington: Rev. Code Wash. §§ 60.68.005 to 60.68.903.
West Virginia: W. Va. Code §§ 38-10A-1 through 38-10A-5.

Wisconsin: Wis. Stat. § 779.97.
Wyoming: Wyo. Stat. §§ 29-6-201 through 29-6-208.

RESEARCH REFERENCES

Am. Jur.
34 Am. Jur. 2d, Federal Taxation (1989)
¶ 9473.

§ 85-8-3. Application; exception.

This chapter applies only to federal tax liens and to other federal liens notices and to other federal liens notices of which under any Act of Congress or any regulation adopted pursuant thereto are required or permitted to be filed in the same manner as notices of federal tax liens. This chapter shall not apply to security interests governed by the provisions of the Uniform Commercial Code-Secured Transactions.

HISTORY: Laws, 1989, ch. 515, § 2, eff from and after January 1, 1990.

RESEARCH REFERENCES

Am. Jur.
34 Am. Jur. 2d, Federal Taxation (1989)
¶ 9473.

§ 85-8-5. Notice of lien; filing.

(1) Notices of liens, certificates and other notices affecting federal tax liens or other federal liens must be filed in accordance with this chapter.

(2) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be filed in the office of the chancery clerk of the county in which the real property subject to a federal lien is situated.

(3) Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates of notices affecting the liens shall be filed as follows:

(a) If the person against whose interest the lien applies is a corporation or a partnership whose principal executive office is in the state, as these entities are defined in the Internal Revenue laws of the United States, in the office of the Secretary of State.

(b) If the person against whose interest the lien applies is a trust that is not covered by paragraph (a) of this subsection, in the office of the Secretary of State.

(c) If the person against whose interest the lien applies is the estate of a decedent, in the office of the Secretary of State.

(d) In all other cases in the office of the chancery clerk of the county where the owner resides at the time of filing of the notice of lien.

HISTORY: Laws, 1989, ch. 515, § 3, eff from and after January 1, 1990.

RESEARCH REFERENCES

Am. Jur.
34 Am. Jur. 2d, Federal Taxation (1989)
¶ 9473.

§ 85-8-7. Certification of notice of lien.

Certification of notices of liens, certificates or other notices affecting federal liens by the Secretary of the Treasury of the United States or his delegate or by any official or entity of the United States responsible for filing or certify notice of any other lien, entitles them to be filed and no other attestation, certification or acknowledgment is necessary.

HISTORY: Laws, 1989, ch. 515, § 4, eff from and after January 1, 1990.

RESEARCH REFERENCES

Am. Jur.
34 Am. Jur. 2d, Federal Taxation (1989)
¶ 9473.

§ 85-8-9. Filing notice; duties and responsibilities.

(1) If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate described in subsection (2) of this section is presented to the filing officer who is:

(a) The Secretary of State, he shall cause the notice to be marked, held and indexed in accordance with the provisions of Section 75-9-519, Mississippi Code of 1972, of the Uniform Commercial Code as if the notice were a financing statement within the meaning of that code; or

(b) Chancery clerk, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the title and address of the official party certifying the lien, and the total amount appearing on the notice of lien.

(2) If a certificate of release, nonattachment, discharge or subordination of any lien is presented to the Secretary of State for filing he shall:

(a) Cause a certificate of release or nonattachment to be marked, held and indexed as if the certificate were a termination statement within the meaning of the Uniform Commercial Code, but the notice of lien to which the certificate relates may not be removed from the files; and

(b) Cause a certificate of discharge or subordination to be held, marked and indexed as if the certificate were a release of collateral within the meaning of the Uniform Commercial Code.

(3) If a refiled notice of federal lien referred to in subsection (1) of this section or any of the certificates or notices referred to in subsection (2) of this section is presented for filing with the chancery clerk, he shall permanently

attach the refiled notice or the certificate to the original notice of lien and enter the refiled notice of the certificate with the date of filing in any alphabetical lien index on the line where the original notice of lien is entered.

(4) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien, filed under this chapter, naming a particular person, and if a notice or certificate is on file, giving the date and hour of its filing. The fee for a certificate is Five Dollars ($5.00). Upon request the filing officer shall furnish a copy of any notice of federal lien or notice or certificate affecting a federal lien for a fee of Two Dollars ($2.00) per page.

HISTORY: Laws, 1989, ch. 515, § 5; Laws, 1990, ch. 373, § 1; Laws, 2001, ch. 495, § 31, eff from and after Jan. 1, 2002.

RESEARCH REFERENCES

Am. Jur.
34 Am. Jur. 2d, Federal Taxation (1989)
¶ 9473.

§ 85-8-11. Duties of chancery clerk.

Chancery clerks with whom notices of federal liens, certificates and notices affecting such liens have been filed prior to January 1, 1990, shall, after that date, continue to maintain records containing such notices and certificates filed prior to January 1, 1990.

HISTORY: Laws, 1989, ch. 515, § 6; Laws, 1990, ch. 373, § 2, eff from and after passage (approved March 13, 1990).

RESEARCH REFERENCES

Am. Jur.
34 Am. Jur. 2d, Federal Taxation (1989)
¶ 9473.

§ 85-8-13. Fees.

(1) The fee for filing and indexing each notice of lien or certificate or notice affecting the lien in the Office of the Secretary of State is:

(a) For a lien on real estate	$ 5.00
(b) For a lien on personal property	$ 5.00
(c) For a certificate of discharge or subordination	$ 5.00
(d) For all other notices, including a certificate of release or nonattachment	$ 5.00

(2) The fee for filing and indexing each notice of lien or certificate or notice affecting the lien in the office of the chancery clerk is:

(a) For a lien on real estate	$ 10.00
(b) For a lien on personal property	$ 10.00

(c) For a certificate of discharge or subordination .... $ 10.00

(d) For all other notices, including a certificate of release or nonattachment .... $ 10.00

(3) The appropriate officer shall bill the district directors of Internal Revenue or other appropriate federal officials on a monthly basis for fees for documents filed by them.

HISTORY: Laws, 1989, ch. 515, § 7; Laws, 2007, ch. 333, § 1, eff July 1, 2007.

Editor's Notes — On June 15, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this Section by Laws of 2007, ch. 333, § 1.

RESEARCH REFERENCES

Am. Jur.
34 Am. Jur. 2d, Federal Taxation (1989)
¶ 9473.

§ 85-8-15. Interpretation and construction of Chapter.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

HISTORY: Laws, 1989, ch. 515, § 8, eff from and after January 1, 1990.

RESEARCH REFERENCES

Am. Jur.
34 Am. Jur. 2d, Federal Taxation (1989)
¶ 9473.

CHAPTER 9.

DEBT ADJUSTING OR CREDIT ARRANGING [REPEALED]

Sec.
85-9-1 through 89-9-5. Repealed.

§§ 85-9-1 through 85-9-5. Repealed.

Repealed by Laws, 2003, ch. 465, § 17, eff from and after July 1, 2003.

§ 85-9-1. [Codes, 1942, § 306-01; Laws, 1971, ch. 302, § 1, eff from and after July 1, 1971.]

§ 85-9-3. [Codes, 1942, § 306-02; Laws, 1971, ch. 302, § 2, eff from and after July 1, 1971.]

§ 85-9-5. [Codes, 1942, § 306-03; Laws, 1971, ch. 302, § 3; Laws, 1989, ch. 450, § 1; Laws, 1991, ch. 507, § 1, eff from and after passage (approved April 5, 1991).]

Editor's Notes — Former § 85-9-1 was entitled: "Definitions."
Former § 85-9-3 was entitled: "Debt adjusting unlawful; penalties."
Former § 85-9-5 was entitled: "Exclusions."

CHAPTER 11.

MISSISSIPPI UNIFORM STATE TAX LIEN REGISTRATION ACT

Sec.	
85-11-1.	Short title.
85-11-3.	Purpose and scope of chapter.
85-11-5.	Definitions.
85-11-7.	Notice of tax lien; enrollment in tax lien registry.
85-11-9.	Perfection of tax lien; tax lien as authority for issuance of writs and warrants.
85-11-11.	Payments to circuit clerks for service provided to citizens for researching and providing lien information.
85-11-13.	Effect of notice of tax lien; duration of lien; reenrollment of tax lien.
85-11-15.	Cancellation of notice of tax lien upon discovery of administrative issue.
85-11-17.	Release of tax lien; enrollment of new tax lien under certain circumstances.
85-11-19.	Tax lien registry; information to be included; certification of records on the tax lien registry; sale of bulk information appearing on tax lien registry; limitation on uses of tax lien registry information.
85-11-21.	Enrollment on tax lien registry of certain unsatisfied tax liens appearing on county judgment rolls.
85-11-23.	Rules and regulations.

§ 85-11-1. Short title.

This chapter may be cited as the Mississippi Uniform State Tax Lien Registration Act.

HISTORY: Laws, 2014, ch. 412, § 1, eff from and after Jan. 1, 2015.

§ 85-11-3. Purpose and scope of chapter.

(1) The purpose of this chapter is to provide a uniform statewide system for filing notices of tax liens to be maintained by the Department of Revenue that are in favor of or enforced by the Mississippi Department of Revenue.

(2) The scope of this chapter is limited to tax liens in real property and personal property, tangible and intangible, of taxpayers or other persons against whom the Mississippi Department of Revenue has liens pursuant to law for unpaid finally determined tax liabilities administered by the Mississippi Department of Revenue.

HISTORY: Laws, 2014, ch. 412, § 2, eff from and after Jan. 1, 2015.

§ 85-11-5. Definitions.

As used in this chapter:

(a) "Commissioner" means the Commissioner of Revenue of the Mississippi Department of Revenue.

(b) "Debtor" and "judgment debtor" means a taxpayer or other person against whom there is an unpaid finally determined tax liability collectible by the Mississippi Department of Revenue.

(c) "Department" means the Mississippi Department of Revenue.

(d) "Finally determined tax liabilities" means any state tax, fee, penalty, and/or interest owed by a person to the Mississippi Department of Revenue where the assessment of the liability is not subject to any further timely filed administrative or judicial review.

(e) "Last-known address of the debtor" means the address of the debtor appearing on the records of the department at the time the notice of tax lien is enrolled in the Uniform State Tax Lien Registry.

(f) "Person" means an individual, organization or legal entity.

(g) "Uniform State Tax Lien Registry" or "Tax Lien Registry" means the public database maintained by the department wherein tax liens enrolled in favor of and enforced by the department are filed.

HISTORY: Laws, 2014, ch. 412, § 3, eff from and after Jan. 1, 2015.

§ 85-11-7. Notice of tax lien; enrollment in tax lien registry.

(1) If any person refuses to pay any finally determined tax liabilities, the commissioner may enroll in the tax lien registry a notice of tax lien for the finally determined tax liabilities due.

(2) The notice of tax lien file shall include:

(a) The name and last-known address of the debtor;

(b) The name and address of the department;

(c) The tax lien number assigned to the lien by the department; and

(d) The basis for the tax lien, including, but not limited to, the amount owed as of the date of enrollment in the tax lien registry.

HISTORY: Laws, 2014, ch. 412, § 4, eff from and after Jan. 1, 2015.

§ 85-11-9. Perfection of tax lien; tax lien as authority for issuance of writs and warrants.

(1) When a notice of tax lien is enrolled by the department in the tax lien registry, the tax lien is perfected and shall be attached to all of the existing and after-acquired property of the debtor, both real and personal, tangible and intangible, which is located in any and all counties within the State of Mississippi.

(2) The perfected tax lien shall be valid as against mortgagees, pledgees, entrusters, purchasers, judgment creditors, and other persons from the time of enrollment in the tax lien registry.

(3) The amount of the tax lien shall be a debt due the State of Mississippi and shall remain a lien upon all property and rights to property belonging to the debtor, both real and personal, tangible and intangible, which is located in any and all counties within the State of Mississippi, including choses in action,

with the same force and like effect as any enrolled judgment of a court of record. Interest and penalty shall accrue on the tax lien at the same rate and with the same restrictions, if any, as specified by statute for the accrual of interest and penalty for the type of tax or taxes for which the tax lien was issued.

(4) The notice of tax lien shall serve as authority for issuance of writs of execution, writs of attachment, writs of garnishment, or other remedial writs. In addition to those writs, the notice of tax lien shall also serve as authority for the commissioner to issue warrants under Sections 27-7-57, 27-13-31 and 27-65-59 for the collection of the tax lien. The tax lien enrolled in the tax lien registry shall constitute the judgment enrolled for the payment of the amount of tax, penalties, and interest referred to in Sections 27-7-57, 27-13-31 and 27-65-59, but the warrant issued for a tax lien enrolled on a tax lien registry shall direct and authorize the special agent to seize and sell the real and personal property found anywhere within this state that belongs to the taxpayer against whom the tax lien was enrolled and not just property in a specific county. Once issued, the execution of the warrants shall be in accordance with Section 27-3-33(4) for the levy on salaries, compensation or other monies due the delinquent taxpayer; Sections 27-7-61 through 27-7-67 in regard to income tax and withholding tax; Sections 27-13-35 through 27-13-41 for franchise tax; and Sections 27-65-63 through 27-65-69 for sales tax and any other tax or fee administered by the department that utilizes the administrative provisions of the sales tax law in the administration of the tax or fee. Under warrants issued for the tax liens enrolled in the tax lien registry, any property, real or personal, within the State of Mississippi is subject to levy under Section 27-3-33(4) if the person that owes the salary, compensation or other monies to the debtor is subject to service of process in this state.

HISTORY: Laws, 2014, ch. 412, § 5, eff from and after Jan. 1, 2015.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (2) by substituting "pledgees" for "pledges." The Joint Committee ratified the correction at its July 24, 2014, meeting.

§ 85-11-11. Payments to circuit clerks for service provided to citizens for researching and providing lien information.

Beginning with calendar year 2015 and each year thereafter, on January 15 and July 15 of each year, the department shall pay to the Mississippi circuit clerks an amount equal to half of the yearly average amount paid for the three (3) fiscal year periods ending June 30, 2011, 2012 and 2013, to each county for the enrollment, reenrollment, and/or release of the tax liens under this chapter. The payment shall be used for the service provided to citizens that request assistance from circuit clerks for researching and providing lien information, whether such information is on the lien registry or included in historical documents. The clerks shall report the number of citizens assisted to the department on or before June 30 of each year. The commissioner is authorized to pay the clerks out of funds appropriated by the Legislature to defray expenses of the department.

HISTORY: Laws, 2014, ch. 412, § 6, eff from and after Jan. 1, 2015.

§ 85-11-13. Effect of notice of tax lien; duration of lien; reenrollment of tax lien.

(1) A notice of tax lien shall be a lien upon the debtor's property located anywhere in the state for a period of seven (7) years from the date of enrollment unless:

(a) It is sooner released by the department; or

(b) The department reenrolls the notice of tax lien before the expiration of the seven (7) years. There shall be no limit upon the number of times that the department may reenroll notices of tax liens.

(2) In the event that a notice of tax lien lapses on the expiration of seven (7) years, the notice of tax lien may, at any time thereafter and in the sole discretion of the department, be reenrolled. A notice of tax lien that is reenrolled pursuant to this subsection shall be fully enforceable as of the date of reenrollment; however, any notice of tax lien that is reenrolled after the lapse of the seven-year period shall lose the priority it had prior to its expiration. There shall be no limit upon the number of times that the department may reenroll notices of tax liens in this manner.

(3) If the department reenrolls a notice of tax lien, the notice of tax lien in regard to that reenrollment shall contain the following information:

(a) The name and last-known address of the debtor;

(b) The name and address of the department;

(c) An indication that the notice of tax lien is for a previously enrolled lien;

(d) The tax lien number assigned to the lien by the department; and

(e) The basis for the tax lien, including, but not limited to, the amount owed as of the date of reenrollment in the tax lien registry.

(4) The reenrollment of a tax lien in the tax lien registry within the seven-year period shall constitute a continuation of the tax lien appearing on the judgment roll of the county as it relates to real and personal property belonging to the debtor in that county; however, the reenrolled tax lien shall attach to all property and all rights to property belonging to the debtor, both real and personal, tangible and intangible, located in any and all counties within the state as of the date of the reenrollment in the tax lien registry. A notice of release of tax lien filed in the tax lien registry shall constitute a release of tax lien within the department, the tax lien registry, and/or the county in which the tax lien was previously enrolled. The information contained on the tax lien registry shall be controlling, and any inconsistencies found between the tax lien registry and the judgment roll of any county shall be superseded by the tax lien registry.

HISTORY: Laws, 2014, ch. 412, § 7, eff from and after Jan. 1, 2015.

§ 85-11-15. Cancellation of notice of tax lien upon discovery of administrative issue.

Within two (2) working days from the date the department discovers an administrative issue in the filing of a notice of tax lien in the tax lien registry, it may cancel a notice of tax lien from the tax lien registry and file a notice of release of the tax lien due to administrative correction. The notice of tax lien shall be treated as though never enrolled.

HISTORY: Laws, 2014, ch. 412, § 8, eff from and after Jan. 1, 2015.

§ 85-11-17. Release of tax lien; enrollment of new tax lien under certain circumstances.

(1) Within fifteen (15) working days from the receipt by the department of full payment of a tax lien enrolled in the tax lien registry, including payment of any additionally accruing interest, penalty, fees and/or costs, the department shall file in the tax lien registry a notice of release of the tax lien being paid.

(2) In the event that a notice or release of tax lien is issued in error by the department and enrolled in the tax lien registry; or the form of payment received by the department is not honored and/or the transfer of payment to the department is not completed for any reason after the notice of release of tax lien is enrolled in the tax lien registry; or the department is required to return and/or turn over the payment received to the taxpayer or other person due to bankruptcy, a court order, or other proceedings after the notice of release of the tax lien issued is enrolled in the tax lien registry; the department, in its sole discretion, may enroll a new tax lien for the finally determined tax liabilities represented in the tax lien for which the tax lien was issued, including any additional accruing interest, penalty and/or fees to the date of the new enrollment. A notice of tax lien that is enrolled pursuant to this provision shall be fully enforceable as of the date of the new enrollment.

HISTORY: Laws, 2014, ch. 412, § 9, eff from and after Jan. 1, 2015.

§ 85-11-19. Tax lien registry; information to be included; certification of records on the tax lien registry; sale of bulk information appearing on tax lien registry; limitation on uses of tax lien registry information.

(1) The department shall maintain notices of tax liens filed in the tax lien registry after January 1, 2015 in its information management system in a form that permits them to be readily accessible in an electronic form through the Internet and to be reduced to printed form. The electronic and printed form shall include the following information:

(a) The name of the taxpayer as judgment debtor;

(b) The name and address of the department;

(c) The tax lien number assigned to the lien by the department;

(d) Whether the enrollment is the first enrollment of the tax lien or a reenrollment of the tax lien;

(e) The amount of the taxes, penalties, interest, and fees indicated due on the notice of tax lien received from the department; and

(f) The date and time of enrollment or reenrollment.

(2) The department shall not charge for the access to information on the enrollment of tax liens by name of judgment debtor or by tax lien number. The department is, however, authorized to charge for the certification of any record or lack of records appearing on the tax lien registry. The department shall determine the process by which such tax lien registry certification can be requested, including a charge for such certification that shall cover at least the cost of providing the certification. The payment of the charge for a tax lien registry certification shall be retained by the department as reimbursement of its cost to provide the certification.

(3) The department is authorized to sell at bulk the information appearing on the tax lien registry. In selling the information, the department shall determine the process by which the information will be sold and the media or method by which it will be available to the purchaser and shall set a price for the information that will at least cover the cost of producing the information. The proceeds from the sale of bulk information shall be retained by the department and used to cover its cost to produce the information sold and to maintain the tax lien registry.

(4) Tax lien registry information, whether accessed by name of judgment debtor or by tax lien number at no charge, through a bulk sale of information or by other means, will not be used for a survey, marketing or solicitation purposes. Survey, marketing or solicitation purpose shall not include any action by the department or its authorized agent to collect a debt represented by a tax lien appearing in the tax lien registry. The department or the Attorney General is hereby authorized to bring an action to enjoin the unlawful use of tax lien registry information for a survey, marketing or solicitation purpose and to recover the cost of such action, including reasonable attorney's fees.

HISTORY: Laws, 2014, ch. 412, § 10, eff from and after Jan. 1, 2015.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (4) by substituting "whether accessed" for "whether access." The Joint Committee ratified the correction at its July 24, 2014, meeting.

§ 85-11-21. Enrollment on tax lien registry of certain unsatisfied tax liens appearing on county judgment rolls.

All tax liens currently enrolled appearing on the judgment rolls of the counties of this state as of January 1, 2015 and which the department does not show as satisfied or as issued in error and which were last enrolled or reenrolled on the judgment rolls within seven (7) years before January 1, 2015 shall be immediately enrolled on the tax lien registry on January 1, 2015, and shall have the force and effect of a judgment on all real and personal property belonging to the debtor anywhere in the state for a duration of seven (7) years effective from the date of the enrollment on the tax lien registry unless and until such time as either the notice of tax lien is released or the department reenrolls the tax lien in the tax lien registry.

HISTORY: Laws, 2014, ch. 412, § 11, eff from and after Jan. 1, 2015.

§ 85-11-23. Rules and regulations.

The department shall have the authority to promulgate rules and regulations, not inconsistent with this chapter, as it may deem necessary to enforce its provisions.

HISTORY: Laws, 2014, ch. 412, § 12, eff from and after Jan. 1, 2015.

CHAPTER 13.

AUTOMATED DATA MATCH SYSTEM FOR IDENTIFYING AND SEIZING FINANCIAL ASSETS OF OBLIGORS IDENTIFIED BY DEPARTMENT OF REVENUE

Sec.
85-13-1. Definitions.
85-13-3. Commissioner to develop, maintain and operate automated data match system; purpose; procedure; review of information to determine if department should serve levy to financial institution.
85-13-5. Financial institution's use of certain existing data match systems; immunity from liability; disclosure of certain information; violation by financial institution or employee.

§ 85-13-1. Definitions.

As used in this chapter:

(a) "Commissioner" means the Commissioner of Revenue of the Mississippi Department of Revenue.

(b) "Department" means the Mississippi Department of Revenue.

(c) "Finally determined tax liabilities" means any state tax, fee, penalty, and/or interest owed by a person to the department where the assessment of the liability is not subject to any further timely filed administrative or judicial review.

(d) "Person" means a natural person, partnership, limited partnership, corporation, limited liability company, estate, trust, association, joint venture, other legal entity or other group or combination acting as a unit, and includes the plural as well as the singular in number.

(e) "Financial institution" means a bank, trust company, mutual savings bank, savings and loan association or credit union authorized to do business and accept deposits in this state under state or federal law.

(f) "Account" means any money held in the name of an account owner, individually or jointly with another, including, but not limited to, a deposit account, demand account, savings account, negotiable order of withdrawal account, share account, member account, time certificate of deposit, or money market account. "Account" shall not include money held by a financial institution where the obligor is listed in a capacity other than the owner, including, but not limited to, an authorized signer only, custodian, payable on death beneficiary or agent.

(g) "Obligor" means any person against whom a tax judgment for a finally determined tax liability has been enrolled in the Uniform State Tax Lien Registry for which collection of the tax debt is enforceable as provided by law.

(h) "Levy" means a Distress Warrant for the Levy Of Monies Owed To Taxpayer(s) which is an instrument of the commissioner that binds monies held by the garnishee and owed to the obligor.

(i) "Identifying information" means an obligor's social security number or federal tax identification number.

HISTORY: Laws, 2017, ch. 407, § 1, eff from and after July 1, 2017.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in subsection (h) by substituting "binds" for "bind." The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

§ 85-13-3. Commissioner to develop, maintain and operate automated data match system; purpose; procedure; review of information to determine if department should serve levy to financial institution.

(1) The commissioner shall develop, maintain and operate an automated data match system for the purpose of identifying and seizing the financial assets of obligors as identified by the department.

(2) The commissioner may provide financial institutions a quarterly, electronic inquiry file containing names and identifying information of obligors. Within thirty (30) days of receipt of the inquiry file, the financial institution agreeing to use the data match system shall match the file against its own records for the purpose of identifying whether an account for an obligor is held by the financial institution and notify the department of its findings. When a match is identified, the financial institution shall provide the department the names and identifying numbers on record for the accounts, account numbers, and the account balances as of the date of response back to the department.

(3) A financial institution may request an extension of time to file the information required. Extensions of time are not automatically granted and the reporting institution must demonstrate good cause for requesting the extension. An extension of time for filing the required information may be granted if the request for extension is filed with the commissioner by the date on which the reports are due.

(4) Upon receiving the information from the financial institution and pursuant to the provisions of Section 27-3-33, the commissioner shall review such account information to determine if the department should serve a levy to the financial institution. The levy shall be served either by mail or by delivery by an agent of the commissioner. Not more than twenty-five (25) levies per day shall be served on a financial institution that participated in the data match system. The levy shall require the financial institution to encumber or surrender assets held by the institution on behalf of the obligor. For a financial institution participating in the data match program, the answer shall be made at any time within thirty (30) days after the service of the levy in the form and manner determined by the commissioner. Any amount encumbered and forwarded by the financial institution under this chapter shall not exceed the amount of the warrant.

(5) The financial institution agreeing to use the data match system shall be held to account for only the funds on deposit between the time of service of the levy and the time of its answer, and shall have no obligation to account for additional deposits accruing after the time of its answer to the department. The financial institution may serve its answer within a reasonable time not to exceed thirty (30) days and shall not be held to account for any indebtedness that arises subsequent to service of its answer or property that may come into its hands subsequent to the service of the levy.

(6) The commissioner may develop and provide a system wherein the levy may be delivered and responded to electronically by a financial institution, and the response may include, but shall not require, the electronic transfer of funds.

(7) The commissioner shall adopt a regulation establishing the procedures and requirements for conducting automated data matches with financial institutions pursuant to this chapter as soon as practicable after July 1, 2017.

HISTORY: Laws, 2017, ch. 407, § 2, eff from and after July 1, 2017.

§ 85-13-5. Financial institution's use of certain existing data match systems; immunity from liability; disclosure of certain information; violation by financial institution or employee.

(1) If a financial institution has a current data match system used in compliance with the child support data match system provided for in Section 43-19-48, the financial institution may use that system to comply with the provisions of this chapter. The department shall not require a financial institution to change the file format established with the Department of Human Services in order to comply with this chapter.

(2) A financial institution, including its directors, officers, employees, attorneys, accountants or other agents, is immune from any liability under any law or regulation to any person for the disclosure of information pursuant to this chapter and for the encumbrance, seizure, or surrender of any assets held by the financial institution in response to a levy issued by the department. A financial institution is not liable for any action taken in good faith to comply with the requirements of this section.

(3) Except as otherwise provided in this subsection, a financial institution furnishing a report or providing information to the commissioner is prohibited from disclosing to a depositor or an account holder that the name of the person has been received from or furnished to the commissioner; however, financial institutions may, but are not required to, disclose to their depositors or account holders that the department has the authority to request and receive certain identifying information provided for under this chapter for state tax collection purposes. Financial institutions may, but are not required to, notify a depositor of account holder of the receipt of a levy and imposition of a hold on the depositor's or holder's account.

(4) An authorized agent transmitting data electronically on behalf of financial institutions is subject to the same terms, conditions, and confidentiality provisions that apply to such institutions, as set forth in this chapter.

(5) If a financial institution or any employee of the financial institution willfully violates the provisions of this chapter, the financial institution is liable for the lesser of the amount in the account of the depositor or account holder on the date of submittal of the answer by the financial institution or the dollar amount listed on the levy.

(6) A financial institution may not disclose any information contained in a request for information by the commissioner except to authorized employees, agents or attorneys of the financial institution engaged in complying with the reporting requirements of this chapter or to authorized employees of the department. Employees of the financial institution may use the information only as required in performing their duties and may not otherwise copy, reproduce, retain, or store any information except as instructed in writing by the commissioner. Any electronic media files or other information acquired by the financial institutions from the commissioner will remain the property of the department and must be returned to the commissioner at the time the information reports are due, or at any other time designated by the commissioner.

(7) The department and the financial institution shall not be liable for any applicable early withdrawal penalties and/or any nonsufficient funds (NSF) fees on the obligor's account(s).

(8) Notwithstanding any other law or rule to the contrary, the financial institution participating in the data match system may recover the costs associated with responding to a levy served upon it from the account of the depositor, per contractual agreement, and shall deduct this amount from the account of the depositor prior to transfer to the department.

(9) To support a data match, the department may disclose certain information relating to taxpayers against whom the department has filed a lien. The information includes the name and address of the taxpayer, the amount of the lien, and the person's identification numbers, including the social security number and/or the Employers Identification Number (EIN).

(10) The department may use the information received from a financial institution under this chapter only for the purpose of enforcing the collection of taxes, fees, penalties and/or interest administered by the department. The department shall keep all information received from the financial institutions pursuant to this chapter confidential, and any employee, agent, or representative of the department is prohibited from disclosing that information to any other third party.

HISTORY: Laws, 2017, ch. 407, § 3, eff from and after July 1, 2017.

TITLE 87.

CONTRACTS AND CONTRACTUAL RELATIONS

Chapter 1. Gambling and Future Contracts. 87-1-1
Chapter 3. Power and Letters of Attorney. 87-3-1
Chapter 5. Principal and Surety. 87-5-1
Chapter 7. Improvements to Real Property. 87-7-1
Chapter 9. General Provisions. 87-9-1

CHAPTER 1.

GAMBLING AND FUTURE CONTRACTS

Sec.
87-1-1. Utterly void.
87-1-3. Transfer of property to secure or pay, inures to wife and children of loser.
87-1-5. Loser may sue and recover money or property lost; exceptions.
87-1-7. Limitation on application of Sections 87-1-1 through 87-1-5.
87-1-9. Future contracts; definitions.
87-1-11. Certain exchanges authorized.
87-1-13. Who may provide market quotations by wire.
87-1-15. When contracts of sale for future delivery of cotton, grain, stock, or other commodities enforceable.
87-1-17. Brokers may recover certain advances.
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87-1-21. "Bucket shop" defined.
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87-1-25. Unlawful to rent or lease premises to be used for conducting business prohibited by this chapter.
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87-1-29. Principal entitled to certain written information.
87-1-31. Prohibition against buying or selling futures.
87-1-33. Penalty for dealing in futures.

§ 87-1-1. Utterly void.

Contracts, judgments, securities, conveyances made, given, granted, or executed, where the whole or any part of the consideration or foundation thereof shall be for money, or any valuable thing won, lost, or bet at any game or games, or on any horse-race, cock-fight, or at any other sport, amusement, or pastime, or on any wager whatever, or for the reimbursing or repaying any money knowingly lent or advanced for the purpose of such gaming or gambling, or to be wagered on any game, play, horse-race, cock-fight, or on any sport, amusement, pastime, or wager, shall be utterly void.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 3 (1); 1857, ch. 45, art. 1; 1871, § 1900; 1880, § 990; 1892, § 2114; 1906, § 2300; Hemingway's 1917, § 1910; 1930, § 1824; 1942, § 22.

Cross References — Mississippi Gaming Control Act, see §§ 75-76-1 et seq.
Inapplicability of this section to Mississippi Gaming Control Act, see § 87-1-7.
Clubs, boats, and the like operating gaming devices as nuisances, see § 95-3-25.
Criminal gambling and wagers generally, see §§ 97-33-1 et seq.
Special duty of officers to arrest gamblers, see § 99-3-25.
Proof in gambling cases, see § 99-17-25.

JUDICIAL DECISIONS

ANALYSIS

1. Construction and application.
2. Check in payment.
3. Advancement of money for gambling business.
4. Judgment on gambling contract.
5. Note or bill of exchange for gambling consideration.
6. Recovery of money paid.

1. Construction and application.

Section 87-1-1, which declares "utterly void" all contracts executed and made in connection with illegal gaming activities, does not bar collection of debts arising out of legal gaming activities; thus, § 87-1-1 does not apply to bingo, since charitable bingo games were exempted from any and all "illegal" definitions by § 97-33-51. Frank v. Dore, 635 So. 2d 1369, 1994 Miss. LEXIS 138 (Miss. 1994).

Agreement that price of cotton actually delivered should be fixed by New York cotton quotations during specified time was not illegal. Burgson & Co. v. Williams, Smithwick & Co., 155 Miss. 351, 121 So. 817, 1929 Miss. LEXIS 257 (Miss. 1929).

The trustee in a deed of trust or assignment may enjoin a levy on the property conveyed to him, on the ground that the note on which the judgment is based was given for a gambling consideration. Smither v. Keys, 30 Miss. 179, 1855 Miss. LEXIS 83 (Miss. 1855).

Where the original contract is illegal, any subsequent contract which carries it into effect is also illegal. Adams v. Rowan, 16 Miss. 624, 1847 Miss. LEXIS 65 (Miss. 1847).

2. Check in payment.

Indorsement and transfer of check in payment of gambling debt is void and ineffective to pass title to any subsequent holder. Skinner Mfg. Co. v. Deposit Guaranty Bank, 160 Miss. 815, 133 So. 660, 1931 Miss. LEXIS 166 (Miss. 1931).

Bank paying check indorsed in payment of gambling debt, resulting in loss to bank when maker stopped payment, held without remedy against maker. Skinner Mfg. Co. v. Deposit Guaranty Bank, 160 Miss. 815, 133 So. 660, 1931 Miss. LEXIS 166 (Miss. 1931).

3. Advancement of money for gambling business.

One who advances money to another to be used in a gambling business, and who is to be repaid only from the proceeds of the business, cannot enforce payment, and a note given after the close of business for money so advanced is without valid consideration. Virden v. Murphey, 78 Miss. 515, 28 So. 851, 1900 Miss. LEXIS 108 (Miss. 1900).

4. Judgment on gambling contract.

A suit on a judgment rendered upon a note given for gambling contract can be defeated by showing the illegality of the original transaction. Campbell v. New Orleans Nat'l Bank, 74 Miss. 526, 21 So. 400, 1896 Miss. LEXIS 177 (Miss. 1896).

A judgment obtained upon a gambling contract is void by statute, and it will make no difference that the note on which the judgment is based passed for value into the hands of an innocent purchaser. Lucas v. Waul, 20 Miss. 157, 1849 Miss. LEXIS 16 (Miss. 1849); Martin v. Terrell, 20 Miss. 571, 1849 Miss. LEXIS 90 (Miss. 1849); Smither v. Keys, 30 Miss. 179, 1855 Miss. LEXIS 83 (Miss. 1855).

5. Note or bill of exchange for gambling consideration.

One who advances money to another to be used in a gambling business, and who is to be repaid only from the proceeds of the business, cannot enforce payment, and a note given after the close of business for money so advanced is without valid consideration. Virden v. Murphey, 78 Miss. 515, 28 So. 851, 1900 Miss. LEXIS 108 (Miss. 1900).

A bill of exchange or promissory note is void where the consideration, in whole or in part, is for money or other valuable thing won at any game or on a horse race, etc. Crawford v. Storms & Brooks, 41 Miss. 540, 1867 Miss. LEXIS 28 (Miss. 1867).

The maker of a note, payable to a named individual or bearer, when sued by another than the party named as payee, may successfully defend by showing that the plaintiff won the note in a bet with the payee. Holman v. Ringo, 36 Miss. 690, 1859 Miss. LEXIS 85 (Miss. 1859).

A note given for a gambling consideration may be declared void either at law or in a court of equity. McAuley's Adm'r v. Mardis, 1 Miss. 307, 1828 Miss. LEXIS 1 (Miss. 1828).

6. Recovery of money paid.

Money paid by mistake is recoverable and it is no defense to a suit therefor that the contract out of which the transaction sprung was an illegal one where resort to the contract is unnecessary to prove the plaintiff's case. Adler v. C. J. Searles & Co., 86 Miss. 406, 38 So. 209, 1905 Miss. LEXIS 11 (Miss. 1905).

Judgments on any wager whatever are void under this section, and money lost on any wager can be recovered back by the loser. Campbell v. New Orleans Nat'l Bank, 74 Miss. 526, 21 So. 400, 1896 Miss. LEXIS 177 (Miss. 1896).

RESEARCH REFERENCES

ALR.

Action to recover money or property lost and paid through gambling as affected by statute of limitations. 22 A.L.R.2d 1390.

Criminal conspiracies as to gambling. 91 A.L.R.2d 1148.

Construction and application of state or municipal enactments relating to policy or numbers games. 70 A.L.R.3d 897.

Validity, construction, and application of statutes or ordinances involved in prosecutions for transmission of wagers or wagering information related to bookmaking. 53 A.L.R.4th 801.

Private contests and lotteries: entrants' rights and remedies. 64 A.L.R.4th 1021.

Am. Jur.

17A Am. Jur. 2d, Contracts § 322.

38 Am. Jur. 2d, Gambling §§ 129 et seq., 154 et seq.

7 Am. Jur. Pl & Pr Forms (Rev) Contracts, Forms 8, 9 (answers alleging as defenses that contract is void as against public policy, and for illegality).

CJS.

38 C.J.S., Gaming §§ 3, 4 et seq.

§ 87-1-3. Transfer of property to secure or pay, inures to wife and children of loser.

Any sale, mortgage, transfer, or conveyance of any estate, real or personal, to any person or to another for his use or benefit, or in any manner to satisfy or secure money or other thing won, or any part thereof, or to secure or satisfy any money or other thing lent or advanced on any consideration, foundation, or purpose mentioned in Section 87-1-1, or any part thereof, shall inure to and vest in the wife and children of said mortgagor, seller, vendor, bargainor, or lessor, the whole estate, title, and interest of such person sold, mortgaged, bargained, transferred, or conveyed, as though such person had died intestate. And the parties to any action founded on any contract or transaction within this chapter, shall be compelled to answer any bill of discovery touching the same.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 3 (2); 1857, ch. 45, art. 2; 1871, § 1901; 1880, § 991; 1892, § 2115; 1906, § 2301; Hemingway's 1917, § 1911; 1930, § 1825; 1942, § 23.

Cross References — Mississippi Gaming Control Act, see §§ 75-76-1 et seq.
Inapplicability of this section to Mississippi Gaming Control Act, see § 87-1-7.

JUDICIAL DECISIONS

1. In general.

Where a bank knowingly advanced money for use in dealing in futures at a time when such contracts were unlawful, wife of borrower may have note and mortgage executed by herself and husband on their homestead and her separate property, to secure same, cancelled, whereupon the property would vest in herself and children; in such case it is immaterial that borrower had right to buy cotton futures by mail or wire from brokers in another state. Cohn v. Brinson, 112 Miss. 348, 73 So. 59, 1916 Miss. LEXIS 118 (Miss. 1916).

§ 87-1-5. Loser may sue and recover money or property lost; exceptions.

If any person, by playing at any game whatever, or by betting on the sides or hands of such as do play at any game, or by betting on any horse race or cockfight, or at any other sport or pastime, or by any wager whatever, shall lose any money, property, or other valuable thing, real or personal, and shall pay or deliver the same or any part thereof, the person so losing and paying or delivering the same, or his wife or children, may sue for and recover such money, property, or other valuable thing so lost and paid or delivered, or any part thereof, from the person knowingly receiving the same, with costs. However, this section shall not apply to betting, gaming or wagering:

(a) On a cruise vessel as defined in Section 27-109-1 whenever such vessel is in the waters within the State of Mississippi, which lie adjacent to the State of Mississippi south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay;

(b) In a structure located in whole or in part on shore in any of the three (3) most southern counties in the State of Mississippi in which the registered voters of the county have voted to allow such betting, gaming or wagering on cruise vessels as provided in Section 19-3-79, if:

(i) The structure is owned, leased or controlled by a person possessing a gaming license, as defined in Section 75-76-5, to conduct legal gaming on a cruise vessel under paragraph (a) of this section;

(ii) The part of the structure in which licensed gaming activities are conducted is located entirely in an area which is located no more than eight hundred (800) feet from the mean high-water line (as defined in Section 29-15-1) of the waters within the State of Mississippi, which lie adjacent to the State of Mississippi south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay, or, with regard to Harrison County only, no farther north than the southern boundary of the right-of-way for U.S. Highway 90, whichever is greater; and

(iii) In the case of a structure that is located in whole or part on shore, the part of the structure in which licensed gaming activities are conducted shall lie adjacent to state waters south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay. When the site upon which the structure is located consists of a parcel of real property, easements and rights-of-way for public streets and highways shall not be construed to interrupt the contiguous nature of the parcel, nor shall the footage contained within the easements and rights-of-way be counted in the calculation of the distances specified in subparagraph (ii).

(c) On a vessel as defined in Section 27-109-1 whenever such vessel is on the Mississippi River or navigable waters within any county bordering on the Mississippi River; or

(d) That is legal under the laws of the State of Mississippi.

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 3 (3); 1857, ch. 45, art. 3; 1871, § 1902; 1880, § 992; 1892, § 2116; 1906, § 2302; Hemingway's 1917, § 1912; 1930, § 1826; 1942, § 24; Laws, 1989, ch. 481, § 1; Laws, 1990, ch. 449, § 3; Laws, 1990, ch. 573, § 7; Laws, 1990 Ex Sess, ch. 45 § 147; Laws, 2005, 5th Ex Sess, ch. 16, § 1, eff from and after passage (approved Oct. 17, 2005).

Cross References — Elected or appointed official not to derive any pecuniary benefit as result of duties under this section, and penalties therefor, see § 25-4-119.

Licensing and regulation of cruise vessels, see § 27-109-1 et seq.

Mississippi Gaming Control Act, see §§ 75-76-1 et seq.

Inapplicability of this section to Mississippi Gaming Control Act, see § 87-1-7.

Forfeiture of moneys exhibited for purpose of betting, see § 97-33-17.

RESEARCH REFERENCES

ALR.

Law of forum against wagering transaction as precluding enforcement of claim based on gambling transaction valid under applicable foreign law. 71 A.L.R.3d 178.

Private contests and lotteries: entrant's rights and remedies. 64 A.L.R.4th 1021.

Validity, construction, and application of statute or ordinance prohibiting or regulating use of messenger services to place wagers in pari-mutuel pool. 78 A.L.R.4th 483.

Recovery in tort for wrongful interference with chance to win game, sporting event, or contest. 85 A.L.R.4th 1048.

Am. Jur.

38 Am. Jur. 2d, Gambling §§ 154, 159-161.

12 Am. Jur. Pl & Pr Forms (Rev) Gambling, Forms 11-14 (complaint, or declaration to recover gambling losses).

§ 87-1-7. Limitation on application of Sections 87-1-1 through 87-1-5.

Sections 87-1-1, 87-1-3 and 87-1-5 shall not apply to contracts for future delivery which are valid under succeeding sections of this chapter and shall not apply to activity which is lawfully conducted pursuant to the regulatory authority of the Mississippi Gaming Control Act (Section 75-76-1 et seq.)

HISTORY: Codes, Hutchinson's 1848, ch. 64, art. 3 (3); 1857, ch. 45, art. 3; 1871, § 1902; 1880, § 992; 1892, § 2116; 1906, § 2302; Hemingway's 1917, § 1912; 1930, § 1826; 1942, § 24; Laws, 1990 Ex Sess, ch. 45, § 84, eff from and after passage (approved June 29, 1990).

§ 87-1-9. Future contracts; definitions.

For the purposes of the following sections of this chapter the term "contract" shall be held to include sales, purchases, agreements of sale, agreements to sell and agreements to purchase, that the word "person" wherever used in the following sections shall be construed to import the plural or singular, as the case demands, and shall include individuals, associations, partnerships and corporations.

HISTORY: Codes, 1930, § 1827; 1942, § 25; Laws, 1928, ch. 304.

§ 87-1-11. Certain exchanges authorized.

There may be organized in any city in the State of Mississippi voluntary associations to be known as cotton exchanges, grain exchanges, boards of trade or similar institutions to receive and post quotations on cotton, grain, stocks, bonds and other commodities for the benefit of its members and other persons engaged in the production of cotton, grain and other commodities. Such associations shall adopt a uniform set of rules and regulations not incompatible with the laws, as are usual for such associations. They shall open their books to the inspection of proper courts and officers of the law when required.

HISTORY: Codes, 1930, § 1834; 1942, § 32; Laws, 1928, ch. 304.

Cross References — Regulation of transfer of investment securities under the Uniform Commercial Code, see § 75-8-101 et seq.

§ 87-1-13. Who may provide market quotations by wire.

Only members of cotton exchanges, grain exchanges, boards of trade or similar institutions organized under the laws of Mississippi or any other state may provide for their use and the use of their clients, private or public wires from cities in Mississippi where such cotton exchanges, grain exchanges, boards of trade or similar institutions are located to other cities without the State of Mississippi where cotton exchanges, grain exchanges, boards of trade or similar institutions are operated, and may receive over such private or public wires and post for their own use and that of their clients and of any person engaged in the production of cotton, grain or other commodities, market quotations and market news, covering cotton, grain, stocks and other commodities, and transmit for execution contracts of sale for future delivery. In all cases it is contemplated that the delivery of the commodity purchased or sold, as the case may be, will be carried out by the principals or their successors or assignees; and that the contract for delivery thereof will be performed or discharged according to the rules of the exchange, board of trade or similar institutions where the contract is executed.

HISTORY: Codes, 1930, § 1835; 1942, § 33; Laws, 1928, ch. 304.

§ 87-1-15. When contracts of sale for future delivery of cotton, grain, stock, or other commodities enforceable.

(1) All contracts of sale for future delivery of cotton, grain, stock, or other commodities (a) made in accordance with the rules of any board of trade, exchange or similar institution where such contracts of sale are executed; and (b) actually executed on the floor of such board of trade, exchange or similar institutions and performed or discharged according to the rules thereof; and (c) when such contracts of sale are made with or through a regular member in good standing of a cotton exchange, grain exchange or similar institution organized under the laws of the State of Mississippi or any other state shall be, and they are hereby declared to be, valid and enforceable in the courts of this state according to their terms.

(2) Notwithstanding the provisions of subsection (1) of this section, contracts of sale for the future delivery of cotton in order to be valid and enforceable must not only conform to the requirements of clauses (a), (b) and (c) of subsection (1) of this section, but must also be made subject to the provisions of the United States Internal Revenue Code of 1954, subchapter D. In the event, however, that this subsection be held inoperative for any reason, then contracts for the future delivery of cotton shall be valid and enforceable if they conform to the requirements of clauses (a), (b) and (c) of subsection (1) of this section.

(3) If contracts of sale for future delivery of cotton, grain, stock, or other commodity shall conform to all of the requirements set forth above in this section, then the same shall be valid and enforceable in all the courts of this state, notwithstanding that at the time of execution of such contracts that either or both of the parties thereto did not contemplate or intend that the same should be consummated by the actual delivery and receipt of the commodity specified. The plain intent of this section, while declaring unlawful all transactions conducted in and through a "bucket shop" as hereinafter defined, is to make lawful and enforceable and to withdraw from the provisions of the gaming and wagering laws, all transactions executed upon and in accordance with the rules of a legitimate cotton, grain, stock or other commodity exchange or board of trade whether the intent of delivery of the actual commodity was present or not and this section shall be liberally construed at all times so as to effectuate this purpose.

HISTORY: Codes, 1930, § 1828; 1942, § 26; Laws, 1928, ch. 304; Laws, 1956, ch. 229.

Cross References — "Bucket shop" defined, see § 87-1-21.

JUDICIAL DECISIONS

1. In general.

Forward contract for future delivery of cotton was not void as being a futures contract where there was provision for delivery by the seller of cotton sold. Austin v. Montgomery, 336 So. 2d 745, 1976 Miss. LEXIS 1523 (Miss. 1976).

This section does not make an arbitrary distinction between brokerage houses which have connections with commodity exchanges and those which do not, and consequently does not violate due process. Kohlmeyer & Co. v. Rotwein, 186 So. 2d 768, 1966 Miss. LEXIS 1331 (Miss.), cert. denied, 385 U.S. 971, 87 S. Ct. 508, 17 L. Ed. 2d 435, 1966 U.S. LEXIS 106 (U.S. 1966).

This section does not violate the public policy of Mississippi against gambling. Kohlmeyer & Co. v. Rotwein, 186 So. 2d 768, 1966 Miss. LEXIS 1331 (Miss.), cert. denied, 385 U.S. 971, 87 S. Ct. 508, 17 L. Ed. 2d 435, 1966 U.S. LEXIS 106 (U.S. 1966).

The fact that the State of Mississippi does not have the power to control the rules and regulations adopted by commodity exchanges beyond its borders does not make this section an unconstitutional delegation of legislative power. Kohlmeyer & Co. v. Rotwein, 186 So. 2d 768, 1966 Miss. LEXIS 1331 (Miss.), cert. denied, 385 U.S. 971, 87 S. Ct. 508, 17 L. Ed. 2d 435, 1966 U.S. LEXIS 106 (U.S. 1966).

In brokers' suit to recover money paid client under mistaken belief that margin of client was greater than needed, evidence as to whether contract between client and broker was gambling contract held for jury, even though contract had appearance of legality, and stated that actual delivery of commodities bought or sold was contemplated. Knox v. Clark, 177 Miss. 195, 171 So. 340, 1936 Miss. LEXIS 278 (Miss. 1936).

Intention of both parties to contract for future delivery that transaction was to be closed by settlement of difference between price when made and price at time of closing may be shown by what parties said and did in respect of contract. Alamaris v. John F. Clark & Co., 166 Miss. 122, 145 So. 893, 1933 Miss. LEXIS 329 (Miss. 1933).

Where there is substantial evidence that will support inference that both parties did not intend actual delivery under contract for future delivery, question is for jury. Alamaris v. John F. Clark & Co., 166 Miss. 122, 145 So. 893, 1933 Miss. LEXIS 329 (Miss. 1933).

Where evidence of seller of corn for future delivery on board of trade tended to show that neither seller nor brokers intended actual delivery but that cash settlement of difference between contract price and market price at time fixed for delivery should be made, direction of verdict for brokers was error. Alamaris v. John F. Clark & Co., 166 Miss. 122, 145 So. 893, 1933 Miss. LEXIS 329 (Miss. 1933).

Notwithstanding statute relating to contracts for future delivery of commodities according to rules of boards of trade or exchanges, formal contract is not conclusive where other evidence discloses that it was used as a means of dealing in futures. Alamaris v. John F. Clark & Co., 166 Miss. 122, 145 So. 893, 1933 Miss. LEXIS 329 (Miss. 1933).

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. 2d, Gambling §§ 37, 144, 147-153.

§ 87-1-17. Brokers may recover certain advances.

Any broker, agent or any other person making advances to or for account of any party to any contract falling within and satisfying the provisions of Section 87-1-15 shall be entitled to recover the amount of such advances from the party to, or for account of whom, the advances were made.

HISTORY: Codes, 1930, § 1829; 1942, § 27; Laws, 1928, ch. 304.

§ 87-1-19. When contracts of sale for future delivery of cotton, grain, stocks, or other commodities unenforceable.

Any contract of sale for the future delivery of cotton, grain, stocks, or other commodities, which is to be settled according to or upon the basis of the public market quotations or prices made on any board of trade, exchange or similar institutions, upon which contracts of sale for future delivery are executed and dealt in without any actual bona fide execution and the carrying out or discharge of such contracts upon the floor of such exchange, board of trade or similar institution, in accordance with the rules thereof, shall be null and void and unenforceable in any court of this state, and no action shall lie thereon at the suit of any party thereto.

HISTORY: Codes, 1930, § 1830; 1942, § 28; Laws, 1928, ch. 304.

JUDICIAL DECISIONS

1. In general.

Where the legislature passed a law authorizing brokers to transmit for execution contracts for sale for future delivery, the legislature did not intend to change the law providing that any contract of sale for future delivery of cotton made without any actual bona fide execution in carrying out such contract shall be void and unenforceable. Laird, Bissell & Meeds v. Capps, 224 Miss. 361, 80 So. 2d 49, 1955 Miss. LEXIS 500 (Miss. 1955).

Sales of cotton futures, where there was no contemplation of actual delivery of cotton, were not valid despite the statute which authorized brokers to transmit for execution contracts for sale for future delivery. Laird, Bissell & Meeds v. Capps, 224 Miss. 361, 80 So. 2d 49, 1955 Miss. LEXIS 500 (Miss. 1955).

A hedging contract contemplated by this section is void and can furnish no foundation upon which to predicate a civil claim for damages. Capps v. Postal Telegraph-Cable Co., 197 Miss. 118, 19 So. 2d 491, 1944 Miss. LEXIS 280 (Miss. 1944).

Telegraph company is not liable for failure to send telegram to firm's officer informing of sale of cotton by firm, delivery to be made at future date, for sole purpose of having officer make hedging contract with firm's brokers on New York exchange to protect firm against any rise in price that the firm would have to pay for the cotton, since reliance on the holding contract, which is void under the statute, is essential to plaintiffs' case. Capps v. Postal Telegraph-Cable Co., 197 Miss. 118, 19 So. 2d 491, 1944 Miss. LEXIS 280 (Miss. 1944).

In brokers' suit to recover money paid client under mistaken belief that margin of client was greater than needed, evidence as to whether contract between client and broker was gambling contract held for jury, even though contract had appearance of legality, and stated that actual delivery of commodities bought or sold was contemplated. Knox v. Clark, 177 Miss. 195, 171 So. 340, 1936 Miss. LEXIS 278 (Miss. 1936).

Notwithstanding statute relating to contracts for future delivery of commodities according to rules of boards of trade or exchanges, formal contract is not conclusive where other evidence discloses that it was used as a means of dealing in futures. Alamaris v. John F. Clark & Co., 166 Miss. 122, 145 So. 893, 1933 Miss. LEXIS 329 (Miss. 1933).

Intention of both parties to contract for future delivery that transaction was to be closed by settlement of difference between price when made and price at time of closing may be shown by what parties said and did in respect of contract. Alamaris v. John F. Clark & Co., 166 Miss. 122, 145 So. 893, 1933 Miss. LEXIS 329 (Miss. 1933).

Where there is substantial evidence that will support inference that both parties did not intend actual delivery under contract for future delivery, question is for jury. Alamaris v. John F. Clark & Co., 166 Miss. 122, 145 So. 893, 1933 Miss. LEXIS 329 (Miss. 1933).

Where evidence of seller of corn for future delivery on board of trade tended to show that neither seller nor brokers intended actual delivery but that cash settlement of difference between contract price and market price at time fixed for delivery should be made, direction of verdict for brokers was error. Alamaris v. John F. Clark & Co., 166 Miss. 122, 145 So. 893, 1933 Miss. LEXIS 329 (Miss. 1933).

§ 87-1-21. "Bucket shop" defined.

A "bucket shop" is hereby defined to be and mean any place of business wherein are made contracts of the sort or character denounced by Section 87-1-19, and the maintenance or operation of a bucket shop at any point in this state is hereby prohibited.

HISTORY: Codes, 1930, § 1831; 1942, § 29; Laws, 1928, ch. 304.

§ 87-1-23. Penalties.

Any person either as agent or principal, who knowingly enters into or assists in making any contracts of sale of the sort or character denounced by Section 87-1-19 for the future delivery of cotton, grain, stocks or other commodities, or who maintains or operates a bucket shop as that term is defined in Section 87-1-21, shall be guilty of a felony, and upon conviction thereof shall be fined in a sum not to exceed One Thousand Dollars ($1,000.00), or be imprisoned in the penitentiary not exceeding two (2) years, and any person who shall be guilty of a second offense under this chapter, in addition to the penalties above described, may upon conviction, be both fined and imprisoned in the discretion of the court, and if a corporation, it shall be liable to forfeiture of all its rights and privileges as such, and the continuance of such establishment after the first conviction shall be deemed a second offense. It shall be the duty of the attorney general to institute proceedings for the forfeiture of the charter of any corporation making itself liable to such forfeiture under the provisions of this chapter.

HISTORY: Codes, 1930, § 1833; 1942, § 31; Laws, 1928, ch. 304.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

§ 87-1-25. Unlawful to rent or lease premises to be used for conducting business prohibited by this chapter.

Any person, whether as agent or owner, who shall rent or lease any office or place of business to any person, association of persons or corporation, to be used in, or for the purpose of negotiating or effectuating the class of contracts prohibited by this chapter, knowing such person, association of persons or corporation to be engaged in such business, shall be guilty of a misdemeanor, and on conviction shall be punished as provided by law.

HISTORY: Codes, Hemingway's 1917, § 1923; 1930, § 1836; 1942, § 34; Laws, 1908, ch. 118.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 87-1-27. Gambling and future contracts; witnesses denied privilege against self incrimination.

No person shall be excused in any prosecution under Sections 87-1-1 through 87-1-25, concerning gambling and future contracts, from testifying touching anything done by himself or others, contrary to the provisions of said sections; but any discovery made by a witness upon such examination shall not be used against him in any penal or criminal prosecution, and he shall be altogether pardoned of the offense so done or participated in by him.

HISTORY: Codes, Hemingway's 1917, § 1917; 1930, § 1837; 1942, § 35; Laws, 1908, ch. 118.

Cross References — Witness in gaming case being required to testify although it may incriminate him, see § 99-17-27.

RESEARCH REFERENCES

Lawyers' Edition.

Adequacy, under Federal Constitution, of immunity granted in lieu of privilege against self-incrimination-Supreme court cases. 32 L. Ed. 2d 869.

§ 87-1-29. Principal entitled to certain written information.

Every person shall furnish upon demand to any principal for whom such person has executed any contract of sale for the future delivery of any cotton, grain, stocks or other commodities a written instrument setting forth the name and location of the exchange, board of trade or similar institution upon which such contract has been executed, the date of execution of the contract and the name and address of the persons with whom such contract was executed and if such person shall refuse or neglect to furnish such statement upon reasonable demand, such refusal or neglect shall be prima facie evidence that such contract was an illegal contract within the provisions of Section 87-1-19, and that the person who executed it was engaged in the maintenance and operation of a "bucket shop" within the provisions of Section 87-1-21.

HISTORY: Codes, 1930, §§ 1830, 1832; 1942, § 30; Laws, 1928, ch. 304.

§ 87-1-31. Prohibition against buying or selling futures.

If any person shall buy or sell commodities of any kind, to be delivered at a future day, without agreeing and intending that the commodities are to be actually delivered in kind, and the price paid, he shall be guilty of a misdemeanor, and, on conviction, shall be punished as prescribed in section 87-1-33.

HISTORY: Codes, 1892, § 1121; 1906, § 1202; Hemingway's 1917, § 932; 1930, § 959; 1942, § 2189.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

The sale of cotton on call did not constitute gambling in futures, where the cotton thus sold contemplated actual delivery and not a settlement alone on the market quotations, although it would be a gambling transaction if the real intent of the parties was simply to speculate on the rise and fall of prices, and the goods were not to be delivered. Kiersky v. Hyman Mercantile Co., 192 Miss. 195, 4 So. 2d 881, 198 So. 574 (Miss. 1941).

Public policy of state is to condemn "dealing in futures." Ascher & Baxter v. Edward Moyse & Co., 101 Miss. 36, 57 So. 299, 1911 Miss. LEXIS 96 (Miss. 1911).

Mississippi courts cannot deny to a judgment of a Missouri court, based upon an award in arbitration the full faith and credit secured by U. S. Const. Art. 4 § 1, to the judgments of sister states, simply because the original controversy grew out of a gambling transaction in futures in Mississippi, a misdemeanor under Mississippi law, which further provide that contracts of that character shall not be enforced by any court. Fauntleroy v. Lum, 210 U.S. 230, 28 S. Ct. 641, 52 L. Ed. 1039, 1908 U.S. LEXIS 1506 (U.S. 1908).

The Mississippi courts are not without jurisdiction of causes of action arising out of gambling transactions in futures because of the provision of Miss. Code 1892 § 2117, that contracts of that character "shall not be enforced by any court," since such statute only lays down a rule of decision. Fauntleroy v. Lum, 210 U.S. 230, 28 S. Ct. 641, 52 L. Ed. 1039, 1908 U.S. LEXIS 1506 (U.S. 1908).

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. 2d, Gambling §§ 37, 144 et seq., 165, 166.

§ 87-1-33. Penalty for dealing in futures.

If any person shall deal in contracts called "futures," or shall, by himself or his agent, directly or indirectly buy or sell any "future" contract, he shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00), and be imprisoned in the county jail not more than three (3) months.

HISTORY: Codes, 1892, § 1120; 1906, § 1201; Hemingway's 1917, § 931; 1930, § 958; 1942, § 2188; Laws, 1882, p. 140.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

Note in payment of debt under futures contract cannot be enforced by innocent transferee for value. Gray v. Robinson, 95 Miss. 1, 48 So. 226, 1909 Miss. LEXIS 198 (Miss. 1909).

A note given to a firm of brokers to close a balance advanced by them on behalf of the maker in dealings they had conducted for him in wheat futures on the board of trade of another state is void. Nixon v. Seal, 27 So. 875 (Miss. 1900).

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. 2d, Gambling §§ 37, 144 et seq., 165, 166.

CHAPTER 3.

POWER AND LETTERS OF ATTORNEY

In General. 87-3-1
Uniform Durable Power of Attorney Act. 87-3-101

IN GENERAL

Sec.
87-3-1. Letters may be acknowledged and recorded.
87-3-3. Conveyances by attorney in fact.
87-3-5. When process may be executed on attorney.
87-3-7. Special form not required; gifts given under a power of attorney.
87-3-9. Form of letter of attorney to convey land.
87-3-11. Form to represent party in administration of estate.
87-3-13. Repealed.
87-3-15. Death not an absolute revocation.
87-3-17. Revocation of letters of attorney recordable.

§ 87-3-1. Letters may be acknowledged and recorded.

All letters of attorney intended to be used in this state may be acknowledged or proved as conveyances of land are required to be, and, when so acknowledged or proved, may be recorded in like manner; and copies thereof, duly certified, shall be admitted in evidence, without accounting for the nonproduction of the original.

HISTORY: Codes, 1857, ch. 37, art. 1; 1871, § 1895; 1880, § 1179; 1892, § 193; 1906, § 199; Hemingway's 1917, § 2893; 1930, § 2948; 1942, § 244.

Cross References — Invalidity of power of attorney for confessing judgment, see § 11-7-187.

Signing of commercial paper by authorized representative, see § 75-3-403.

JUDICIAL DECISIONS

1. In general.

Chancery Court has jurisdiction to hear and adjudicate controversy involving validity and effect of power of attorney, which has not been acknowledged and recorded in manner of conveyance of land, with respect to conveyance of real property situated in Republic of Greece where all parties reside in Mississippi and have been effectively subjected to in personam jurisdiction of Chancery Court; court may enter personal judgment, even though controlling substantive law is that of Greece; final adjudication would effectively bind parties in Mississippi and presumably in all other states even though adjudication may not be enforceable in Greece as matter of right and maybe not even as matter of comity. Kountouris v. Varvaris, 476 So. 2d 599, 1985 Miss. LEXIS 2245 (Miss. 1985).

Parties to controversy involving validity and effect of power of attorney which has not been acknowledged and recorded in manner of conveyance of land with respect to conveyance of real property situated in Greece may stipulate to application and enforcement of Mississippi rules of law, rather than otherwise applicable Greek law; if parties do so, trial judge may proceed to adjudge all issues according to Mississippi law and enter final judgment which, subject to appeal, would be enforceable against parties in courts of Mississippi, even though, in Republic of Greece, judgment may not be enforceable. Kountouris v. Varvaris, 476 So. 2d 599, 1985 Miss. LEXIS 2245 (Miss. 1985).

Power of attorney need not be acknowledged or recorded in manner of instrument of conveyance of interest in land in order to authorize attorney in fact to make contracts on behalf of principal and to deal with personal property in Mississippi in which principal holds interest. Kountouris v. Varvaris, 476 So. 2d 599, 1985 Miss. LEXIS 2245 (Miss. 1985).

Before one empowered as attorney in fact may execute and deliver valid instrument of conveyance of interest in land in Mississippi prior in right to interests of (1) subsequent purchasers for value without notice or (2) subsequent judgment lien creditors, written power of attorney must be acknowledged and recorded in conformity with requirements generally applicable to instruments of conveyance of interests in land. Kountouris v. Varvaris, 476 So. 2d 599, 1985 Miss. LEXIS 2245 (Miss. 1985).

Before court may resolve question of whether power of attorney which has not been acknowledged and recorded in manner provided for instruments of conveyance of interests in land is valid and enforceable with respect to real property located in Republic of Greece, Greek law must be consulted to determine whether there is conflict between laws of Mississippi and those of Greece with respect to real property and powers of attorney. Kountouris v. Varvaris, 476 So. 2d 599, 1985 Miss. LEXIS 2245 (Miss. 1985).

RESEARCH REFERENCES

ALR.

What constitutes power coupled with interest within rule as to termination of agency. 28 A.L.R.2d 1243.

Am. Jur.

3 Am. Jur. 2d, Agency §§ 8, 21.

1B Am. Jur. Legal Forms 2d, Agency §§ 14:99 et seq. (powers of attorney).

CJS.

2A C.J.S., Agency § 24.

§ 87-3-3. Conveyances by attorney in fact.

Conveyances of land, or contracts relating thereto, executed by an attorney in fact for his principal, and duly acknowledged or proved, shall have the same force and effect as if executed and acknowledged by the principal; and where a conveyance by an attorney is in execution of letters of attorney, so acknowledged or proved and recorded, it shall pass the interest of the principal though not formally executed in his name.

HISTORY: Codes, 1857, ch. 37, art. 2; 1871, § 1896; 1880, § 1180; 1892, § 194; 1906, § 200; Hemingway's 1917, § 2894; 1930, § 2949; 1942, § 245.

Cross References — Necessity that land conveyances be in writing, see § 89-1-3.

JUDICIAL DECISIONS

1. In general.

Where a deed was first conveyed to a grandson by the decedent, then conveyed back to the estate, then conveyed to the grandson again by the executrix, acting under a purported power of attorney, and when the executrix sought to set aside the deed after the grandson died, and the property was to go to the grandson's surviving wife, based on equity, the deed was not void ab initio when signed by the executrix even though letters of attorney were never recorded. Estate of Dykes v. Estate of Williams, 864 So. 2d 926, 2003 Miss. LEXIS 759 (Miss. 2003).

Before court may resolve question of whether power of attorney which has not been acknowledged and recorded in manner provided for instruments of conveyance of interests in land is valid and enforceable with respect to real property located in Republic of Greece, Greek law must be consulted to determine whether there is conflict between laws of Mississippi and those of Greece with respect to real property and powers of attorney. Kountouris v. Varvaris, 476 So. 2d 599, 1985 Miss. LEXIS 2245 (Miss. 1985).

Chancery Court has jurisdiction to hear and adjudicate controversy involving validity and effect of power of attorney, which has not been acknowledged and recorded in manner of conveyance of land, with respect to conveyance of real property situated in Republic of Greece where all parties reside in Mississippi and have been effectively subjected to in personam jurisdiction of Chancery Court; court may enter personal judgment, even though controlling substantive law is that of Greece; final adjudication would effectively bind parties in Mississippi and presumably in all other states even though adjudication may not be enforceable in Greece as matter of right and maybe not even as matter of comity. Kountouris v. Varvaris, 476 So. 2d 599, 1985 Miss. LEXIS 2245 (Miss. 1985).

Parties to controversy involving validity and effect of power of attorney which has not been acknowledged and recorded in manner of conveyance of land with respect to conveyance of real property situated in Greece may stipulate to application and enforcement of Mississippi rules of law, rather than otherwise applicable to Greek law; if parties do so, trial judge may proceed to adjudge all issues according to Mississippi law and enter final judgment which, subject to appeal, would no doubt be enforceable against parties in courts of Mississippi, even though, in Republic of Greece, judgment may not be enforceable. Kountouris v. Varvaris, 476 So. 2d 599, 1985 Miss. LEXIS 2245 (Miss. 1985).

Power of attorney need not be acknowledged or recorded in manner of instrument of conveyance of interest in land in order to authorize attorney in fact to make contracts on behalf of principal and to deal with personal property in Mississippi in which principal holds interest; however, before one empowered as attorney in fact may execute and deliver valid instrument of conveyance of interest in land in Mississippi prior in right to interests of (1) subsequent purchasers for value without notice or (2) subsequent judgment lien creditors, written power of attorney must be acknowledged and recorded in conformity with requirements generally applicable to instruments of conveyance of interests in land. Kountouris v. Varvaris, 476 So. 2d 599, 1985 Miss. LEXIS 2245 (Miss. 1985).

This section has no application to contracts by an attorney in fact for the making of a lease. Hytken v. Bianca, 186 Miss. 323, 186 So. 624, 188 So. 311, 1939 Miss. LEXIS 199 (Miss. 1939).

The attorney in fact of the beneficiary of a deed of trust cannot appoint a substituted trustee where the deed provides for the appointment "by the beneficiary or any holder of the notes secured or their legal representatives." Allen v. Alliance Trust Co., 84 Miss. 319, 36 So. 285, 1904 Miss. LEXIS 40 (Miss. 1904).

It is always a question of intention whether or not an instrument be an execution of a power. Yates v. Clark, 56 Miss. 212, 1878 Miss. LEXIS 61 (Miss. 1878).

RESEARCH REFERENCES

Am. Jur.

1B Am. Jur. Pl & Pr Forms (Rev), Agency, Form 312 (complaint, petition, or declaration-by devisees of principal-for recovery of property fraudulently conveyed by attorney in fact-for damages).

1B Am. Jur. Legal Forms 2d, Agency §§ 14:75 et seq. (powers of attorney).

§ 87-3-5. When process may be executed on attorney.

When a person interested in the administration of an estate in any court in this state, shall appoint an attorney in fact, resident in the county where the court is held, to represent him therein, and shall cause the letter of appointment to be filed in the office of the clerk of the court in which the estate is administered, where it shall have the same effect as a demand for notice of an order or filing concerning the decedent's estate, all process issued from the court touching the estate may be executed on such attorney, and, when so executed, shall have the same force and effect as if executed on the principal in person.

HISTORY: Codes, 1857, ch. 37, art. 4; 1871, § 1898; 1880, § 1181; 1892, § 195; 1906, § 201; Hemingway's 1917, § 2895; 1930, § 2950; 1942, § 246; Laws, 1994, ch. 336, § 6, eff from and after July 1, 1994.

Editor's Notes — Laws of 1994, ch. 336, §§ 9 and 10 provide:

"SECTION 9. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

"SECTION 10. This act may be cited as the "Uniform Durable Power of Attorney Act."

Laws of 1994, ch. 336, amended this section and Section 87-3-15, added Sections 87-3-101 through 87-3-113, and repealed Section 87-3-13.

§ 87-3-7. Special form not required; gifts given under a power of attorney.

(1) A letter of attorney to transact any business need only express plainly the authority conferred.

(2) If any power of attorney or other writing (a) authorizes an attorney-in-fact or other agent to do, execute or perform any act that the principal might or could do, or (b) evidences the principal's intent to give the attorney-in-fact or agent full power to handle the principal's affairs or deal with the principal's property, the attorney-in-fact or agent shall have the power and authority to make gifts in any amount of any of the principal's property to any individuals or to any organizations described in Sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts, including the authority to exercise all rights and powers granted to a fiduciary under the Revised Uniform Fiduciary Access to Digital Assets Act created under Chapter 23, Title 91.

(3) Subsection (2) as set forth above is declaratory of past and present law in the State of Mississippi, and shall be applied to all powers of attorney, whether executed before, on or after March 16, 1999.

HISTORY: Codes, 1880, § 1186; 1892, § 201; 1906, § 207; Hemingway's 1917, § 2901; 1930, § 2956; 1942, § 252; Laws, 1999, ch. 405, § 1; Laws, 2017, ch. 419, § 19, eff from and after July 1, 2017.

Federal Aspects— Sections 170(c) and 2522(a) of the Internal Revenue Code, see 26 USCS §§ 170(c) and 2522(a), respectively.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Arbitration agreements.
3. Violation.

1. In general.

When an attorney-in-fact is prohibited from giving himself gifts from the principal's property, extrinsic evidence of the principal's intent to allow such gifts is not admissible, and while nothing prohibits a principal from expressly authorizing such gifts in writing, the attorney-in-fact cannot rely on an alleged oral authorization where the power of attorney itself expressly prohibits such gifts; the decedent's alleged oral statements to her relative could not negate the express terms of her power of attorney that prohibited the relative from recognizing any personal gain, and any such transaction was void ab initio. Swank v. Covington (In re Estate of Hemphill), 186 So. 3d 920, 2016 Miss. App. LEXIS 60 (Miss. Ct. App. 2016).

2. Arbitration agreements.

Where a son signed an arbitration agreement on the son's mother's behalf when the mother was admitted to a nursing home, the son brought a wrongful death action against defendants, and defendants sought to compel arbitration, the son lacked actual authority to sign the arbitration agreement on the mother's behalf because no power of attorney was executed, and the Mississippi Supreme Court would regard the informal proof of authority in this case to be clearly insufficient to establish an express agency under Mississippi law. Gross v. GGNSC Southaven, LLC, 83 F. Supp. 3d 691, 2015 U.S. Dist. LEXIS 14071 (N.D. Miss. 2015).

Trial court did not err in failing to enforce an arbitration provision contained within an admission agreement entered into between a nursing home and a resident's daughter who assertedly operated under a power of attorney because only an unauthenticated copy of the power of attorney appeared in the record. Miss. Care Ctr. of Greenville, LLC v. Hinyub, 975 So. 2d 211, 2008 Miss. LEXIS 16 (Miss. 2008).

The joint owner of three certificates of deposit was entitled to them by right of survivorship where the decedent's attorney in fact under a power of attorney placed the joint owner's name on the certificates of deposit, the attorney in fact and the joint owner never shared a confidential relationship while the attorney in fact acted for the decedent, and there was no evidence that the attorney in fact acted in bad faith. In re Dunn v. Reilly, 784 So. 2d 935, 2001 Miss. LEXIS 126 (Miss. 2001).

3. Violation.

Constructive trust was properly imposed on funds a daughter obtained from her deceased father's accounts as the father's attorney-in-fact because there was no history of the father making such gifts. Kilpatrick v. Jarvis (in re Estate of Jarvis), — So. 3d —, 2017 Miss. App. LEXIS 378 (Miss. Ct. App. June 27, 2017).

Relative violated the power of attorney (POA) by making herself a joint owner of certain funds, and she personally benefitted from another transaction, and thus the estate was entitled to recover these certificate of deposit; however, as to another, the decedent had made the relative an owner of the account, and thus the relative did not personally gain from purchasing the new certificate of deposit and she only merely moved funds, and thus the funds attributable to those certificates of deposit were not tainted by any violation of the POA. Swank v. Covington (In re Estate of Hemphill), 186 So. 3d 920, 2016 Miss. App. LEXIS 60 (Miss. Ct. App. 2016).

§ 87-3-9. Form of letter of attorney to convey land.

"Know all, that I, George Poindexter, of ________ county, Mississippi, do hereby appoint Albert Brown, of ________ county, my attorney in fact, with full power to sell and convey in fee simple, with general warranty [or without warranty, as the case may be] of title, that land situated in [describe it].

"Witness my signature, the _______ of _______, A. D. _______.

"George Poindexter."

HISTORY: Codes, 1880, § 1184; 1892, § 199; 1906, § 205; Hemingway's 1917, § 2899; 1930, § 2954; 1942, § 250.

RESEARCH REFERENCES

Am. Jur.
1B Am. Jur. Legal Forms 2d, Agency § 14:103 (power of attorney to sell, convey, and receive purchase price for realty).

§ 87-3-11. Form to represent party in administration of estate.

"Know all, that I, C. C. Claiborne, of _______ county, Mississippi, do hereby constitute Gerard C. Brandon, of _______ county, in said state, my attorney in fact to represent me in the chancery court of said county of _______, in all matters pertaining to the administration in said court of the estate of Phoebe Jones, in which I am interested as an heir and distributee; and I consent that all process issued from said court touching said estate may be executed on my said attorney.

"Witness my signature, the _______ day of _______, A.D. _______.

"C. C. Claiborne."

HISTORY: Codes, 1880, § 1185; 1892, § 200; 1906, § 206; Hemingway's 1917, § 2900; 1930, § 2955; 1942, § 251.

§ 87-3-13. Repealed.

Repealed by Laws, 1994, ch. 336, § 8, eff from and after July 1, 1994.

§ 87-3-13. [Codes, 1892, § 198; 1906, § 204; Hemingway's 1917, § 2898; 1930, § 2953; 1942, § 249; Laws, 1982, ch. 335, §§ 1, 2]

Editor's Notes — Former § 87-3-13 was entitled: Continuance of power; disability or incompetence of principal.

§ 87-3-15. Death not an absolute revocation.

The death of the principal shall not operate a revocation of an agency created by him, other than by writing, as to one who, without notice of such death, in good faith and under circumstances repelling the imputation to him of fraud or negligence, deals with such agent.

HISTORY: Codes, 1880, § 1183; 1892, § 197; 1906, § 203; Hemingway's 1917, § 2897; 1930, § 2952; 1942, § 248; Laws, 1994, ch. 336, § 7, eff from and after July 1, 1994.

Editor's Notes — Laws of 1994, ch. 336, §§ 9 and 10 provide:

"SECTION 9. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

"SECTION 10. This act may be cited as the "Uniform Durable Power of Attorney Act."

Laws of 1994, ch. 336, amended this section and Section 87-3-5, added Sections 87-3-101 through 87-3-113, and repealed Section 87-3-13.

§ 87-3-17. Revocation of letters of attorney recordable.

Any writing revoking letters of attorney may, when acknowledged or proved as conveyances of land are required to be acknowledged or proved, be recorded in like manner, and with like effect from the time of being filed for record, in the office in which the letters revoked were recorded.

HISTORY: Codes, 1880, § 1182; 1892, § 196; 1906, § 202; Hemingway's 1917, § 2896; 1930, § 2951; 1942, § 247.

UNIFORM DURABLE POWER OF ATTORNEY ACT

Sec.	
87-3-101.	Short title.
87-3-103.	Application and construction of sections 87-3-101 through 87-3-113.
87-3-105.	Definition.
87-3-107.	Durable power of attorney not affected by lapse of time, disability or incapacity.
87-3-109.	Relation of attorney in fact to court-appointed fiduciary.
87-3-111.	Power of attorney not revoked until notice.
87-3-113.	Proof of continuance of durable and other powers of attorney by affidavit.

§ 87-3-101. Short title.

Sections 87-3-101 through 87-3-113 may be cited as the "Uniform Durable Power of Attorney Act."

HISTORY: Laws, 1994, ch. 336, § 10, eff from and after July 1, 1994.

Editor's Notes — Laws of 1994, ch. 336, § 10 provides:

"SECTION 10. This act may be cited as the "Uniform Durable Power of Attorney Act."

Laws of 1994, ch. 336, added Code Sections 87-3-101 through 87-3-113, amended Sections 87-3-5 and 87-3-15, and repealed Section 87-3-13.

Comparable Laws from other States — California: Cal Prob Code § 4000 et seq.
Colorado: C.R.S. 15-14-701 et seq.
Hawaii: HRS § 551E-1 et seq.
Idaho: Idaho Code § 15-12-101 et seq.
North Dakota: N.D. Cent. Code, §§ 30.1-30-01 et seq.
Tennessee: Tenn. Code Ann., §§ 34-6-101 et seq.
Virgin Islands: 15 V.I.C. § 1261 et seq.
West Virginia: W. Va. Code § 39B-1-101 et seq.

§ 87-3-103. Application and construction of sections 87-3-101 through 87-3-113.

Sections 87-3-101 through 87-3-113 shall be applied and construed to effectuate their general purpose to make uniform the law with respect to the subject of these sections among states enacting the Uniform Durable Power of Attorney Act.

HISTORY: Laws, 1994, ch. 336, § 9, eff from and after July 1, 1994.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agency §§ 26, 36, 53, 55.

§ 87-3-105. Definition.

A durable power of attorney is a power of attorney by which a principal designates another his attorney in fact in writing and the writing contains the words "This power of attorney shall not be affected by subsequent disability or incapacity of the principal, or lapse of time," or "This power of attorney shall become effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity, and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument.

HISTORY: Laws, 1994, ch. 336, § 1, eff from and after July 1, 1994.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agency §§ 26, 36, 53, 55.

§ 87-3-107. Durable power of attorney not affected by lapse of time, disability or incapacity.

All acts done by an attorney in fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were competent and not disabled. Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument.

HISTORY: Laws, 1994, ch. 336, § 2, eff from and after July 1, 1994.

JUDICIAL DECISIONS

1. Contingency fee contracts.

Where the attorneys in fact entered into a contract of employment with an attorney to pursue a personal injury claim on the ward's behalf, and the attorney, primarily out of caution, later submitted a proposed settlement to the chancery court for approval, the chancery court abused its discretion in reducing the lawyer's fee from a 40 percent contingency fee as provided in the contract to a 33 ⅓ percent contingency fee. The contract was not one entered into pursuant to a traditional probate matter and it was not a contract within the parameters of Miss. Unif. Ch. Ct. R. 6.12; the practical effect of the chancellor's decision, upheld by the court of appeals, was a judicial abrogation of the provisions of the Uniform Durable Power of Attorney Act found in Miss. Code Ann. §§ 87-3-101 through 87-3-113 and it also constituted a failure to uphold Miss. Const. art. 3, § 16 and U.S. Const. Art. I, § 10, cl. 1, which prohibited the impairment of obligations of contracts. In re Savell v. Renfroe, 876 So. 2d 308, 2004 Miss. LEXIS 800 (Miss. 2004).

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agency §§ 26, 36, 53, 55.

§ 87-3-109. Relation of attorney in fact to court-appointed fiduciary.

(1) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, guardian of the estate, or other fiduciary charged with the management of all of the principal's property or all of his property except specified exclusions, the attorney in fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power to revoke or amend the power of attorney that the principal would have had if he were not disabled or incapacitated.

(2) A principal may nominate, by a durable power of attorney, the conservator, guardian of his estate, or guardian of his person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

(3) Any person acting in a fiduciary capacity shall exercise all rights and powers granted to a fiduciary under the Revised Uniform Fiduciary Access to Digital Assets Act created under Chapter 23, Title 91.

HISTORY: Laws, 1994, ch. 336, § 3; Laws, 2017, ch. 419, § 22, eff from and after July 1, 2017.

JUDICIAL DECISIONS

ANALYSIS

1. Construction.
2. Contingency fee contracts.

1. Construction.
Under Miss. Code Ann. § 87-3-109(1), the attorney in fact and the fiduciary are clearly set out as two separate entities. Also, the statute states "if" a trial court appoints a conservator, etc., thus clearly revealing that such an appointment is not required. In re Savell v. Renfroe, 876 So. 2d 308, 2004 Miss. LEXIS 800 (Miss. 2004).

2. Contingency fee contracts.
Where the attorneys in fact entered into a contract of employment with an attorney to pursue a personal injury claim on the ward's behalf, and the attorney, primarily out of caution, later submitted a proposed settlement to the chancery court for approval, the chancery court abused its discretion in reducing the lawyer's fee from a 40 percent contingency fee as provided in the contract to a 33 ⅓ percent contingency fee. The contract was not one entered into pursuant to a traditional probate matter and it was not a contract

within the parameters of Miss. Unif. Ch. Ct. R. 6.12; the practical effect of the chancellor's decision, upheld by the court of appeals, was a judicial abrogation of the provisions of the Uniform Durable Power of Attorney Act found in Miss. Code Ann. §§ 87-3-101 through 87-3-113 and it also constituted a failure to uphold Miss. Const. art. 3, § 16 and U.S. Const. Art. I, § 10, cl. 1, which prohibited the impairment of obligations of contracts. In re Savell v. Renfroe, 876 So. 2d 308, 2004 Miss. LEXIS 800 (Miss. 2004).

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agency §§ 26, 34, 55.

§ 87-3-111. Power of attorney not revoked until notice.

(1) The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the principal.

(2) The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his successors in interest.

HISTORY: Laws, 1994, ch. 336, § 4, eff from and after July 1, 1994.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agency §§ 26, 52, 53.

§ 87-3-113. Proof of continuance of durable and other powers of attorney by affidavit.

As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney in fact under a power of attorney, durable or otherwise, stating that he did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death, disability, or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

HISTORY: Laws, 1994, ch. 336, § 5, eff from and after July 1, 1994.

RESEARCH REFERENCES

Am. Jur.
3 Am. Jur. 2d, Agency §§ 26, 36, 53, 55.

CJS.
3 C.J.S., Agency § 512.

CHAPTER 5.

PRINCIPAL AND SURETY

Sec.

87-5-1. Surety discharged if creditor fails to sue the principal debtor when notified.

87-5-3. Surety paying or tendering the debt.

87-5-5. Surety company may maintain action against defaulting principal.

87-5-7. Surety or indorser, when sued alone, must notify principal and make defense.

87-5-9. Surety paying a judgment.

87-5-11. Bona fide purchasers and encumbrancers protected.

87-5-13. Execution against principal and sureties; how served.

§ 87-5-1. Surety discharged if creditor fails to sue the principal debtor when notified.

Any person bound as surety or accommodation indorser for another, may, at any time after the debt has become due or liability been incurred, give notice in writing to the creditor to commence and prosecute legal proceedings against the principal debtor, if living and resident within this state, for the recovery of the debt; and if the creditor fails to commence legal proceedings by the next term of the court in which the same shall be instituted, to be held after the expiration of thirty (30) days from the giving of the notice, and to prosecute the same to effect, the surety who shall have given the notice shall be discharged from liability. It shall not be lawful to plead or to give in evidence under this section a notice not in writing, and any act of the creditor shall not be a waiver of notice in writing as herein required.

HISTORY: Codes, 1857, ch. 46, art. 1; 1871, § 2257; 1880, § 997; 1892, § 3276; 1906, § 3731; Hemingway's 1917, § 2907; 1930, § 2957; 1942, § 253.

Cross References — Final judgment upon garnishment against surety or accommodation indorser, see § 11-35-55.

Order of liability of indorsers of commercial paper, see § 75-3-414.

Suits on indorsed bills and notes, see § 75-13-3.

Effect of releasing one or more joint debtors, see § 85-5-1.

JUDICIAL DECISIONS

ANALYSIS

1. Construction and application.
2. Sufficiency of notice.
3. Waiver of right to discharge from liability.

1. Construction and application.

Where a contract under which a landowner agreed to be obligated to a lender for the debts of his tenant, was one of guaranty rather than suretyship, and further provided that the lender was not bound to exhaust its recourse against the tenant before being entitled to payment from the landowner, the landowner's demand that the lender proceed against the tenant did not affect its liability for the unpaid loans. Brent v. National Bank of Commerce of Columbus, 258 So. 2d 430, 1972 Miss. LEXIS 1501 (Miss. 1972).

This provision must be strictly construed. Standard Acci. Ins. Co. v. Standard Oil Co., 242 Miss. 11, 133 So. 2d 539, 1961 Miss. LEXIS 523 (Miss. 1961).

This section is not applicable to release a surety on a public construction bond from liability to a subcontractor's supplier. Standard Acci. Ins. Co. v. Standard Oil Co., 242 Miss. 11, 133 So. 2d 539, 1961 Miss. LEXIS 523 (Miss. 1961).

Where mortgagee looked to others than mortgagors for payment of indebtedness for ten years after conveyance by mortgagors to purchasers who assumed indebtedness, gave no notice to mortgagor of invalid foreclosure proceeding, and allowed principal and interest to remain in default for several years without suit, mortgagor held not discharged as surety for her grantees, because of mortgagee's want of diligence, especially where mortgagor made no attempt to put creditor in default under statute. North American Life Ins. Co. v. Smith, 178 Miss. 238, 172 So. 135, 1937 Miss. LEXIS 175 (Miss. 1937).

Mere want of diligence, indulgence, delay not amounting to bar of statute of limitations, or passiveness of creditor towards principal debtor, does not discharge surety. North American Life Ins. Co. v. Smith, 178 Miss. 238, 172 So. 135, 1937 Miss. LEXIS 175 (Miss. 1937).

Indulgences granted to maker of note by holder held not to relieve one who signed note as surety and accommodation indorser from liability on note, where indulgences were not for definite time or supported by consideration. Love v. Clark, 171 Miss. 758, 158 So. 484, 1935 Miss. LEXIS 12 (Miss. 1935).

Suit by nonresident in federal court having jurisdiction was sufficient compliance with statute requiring proceedings after notice in writing by surety. Mississippi Valley Trust Co. v. Brewer, 157 Miss. 890, 128 So. 83, 1930 Miss. LEXIS 289 (Miss. 1930).

That suit instituted by creditor after written notice by surety had not progressed to judgment did not establish that it was not prosecuted to effect. Mississippi Valley Trust Co. v. Brewer, 157 Miss. 890, 128 So. 83, 1930 Miss. LEXIS 289 (Miss. 1930).

This section is not repealed by the Negotiable Instruments Act. First Nat'l Bank v. Rau, 146 Miss. 520, 112 So. 688, 1927 Miss. LEXIS 264 (Miss. 1927); North American Life Ins. Co. v. Smith, 178 Miss. 238, 172 So. 135, 1937 Miss. LEXIS 175 (Miss. 1937).

Bank does not owe surety on note duty to apply or credit amount principal may have on deposit at or after maturity of the note to the payment thereof. Moreland v. People's Bank of Waynesboro, 114 Miss. 203, 74 So. 828, 1917 Miss. LEXIS 22 (Miss. 1917).

Where the principal in consideration of a trust deed to secure the indebtedness granted an extension of time for a definite period, the sureties were relieved. Miller v. Lewis, 103 Miss. 598, 60 So. 654, 1912 Miss. LEXIS 204 (Miss. 1912).

A judgment discharging a surety by reason of his release, under this section, if such judgment is not appealed from, will bar a proceeding for contribution by a co-surety held liable in the same judgment, and the discharge of one surety does not discharge his co-sureties. Ruff v. Montgomery, 83 Miss. 185, 36 So. 67, 1903 Miss. LEXIS 31 (Miss. 1903).

A plea setting up a discharge under the statute, which does not show compliance with it, is defective. Keirn v. Andrews, 59 Miss. 39, 1881 Miss. LEXIS 70 (Miss. 1881).

The statute applies to all the modes and instruments by which suretyship may arise, and the surety's discharge under the statute is as effectual in a court of law as in equity. Smith v. Clopton, 48 Miss. 66, 1873 Miss. LEXIS 36 (Miss. 1873).

2. Sufficiency of notice.

Letter held to be sufficient notice. Bishop v. Currie-McGraw Co., 133 Miss. 517, 97 So. 886, 1923 Miss. LEXIS 164 (Miss. 1923).

Notice such as will discharge a surety must be clear and explicit, and must amount to a demand that the creditor commence and prosecute legal proceedings against the principal debtor. Graham v. Pepple, 132 Miss. 612, 97 So. 180, 1923 Miss. LEXIS 95 (Miss. 1923).

Notice given by one surety in his own behalf will not inure to the benefit of his co-sureties, and failing to sue after such notice will not discharge such co-sureties.

Ramey v. Purvis, 38 Miss. 499, 1860 Miss. LEXIS 21 (Miss. 1860).

3. Waiver of right to discharge from liability.

Where a tenant's past due notes were renewed at the request of the landowner who was obligated under a contract of guaranty for the debts of the tenant, and the contract of guaranty authorized the lender to grant an extension of the tenant's debts without notice to the landowner, and provided that the discontinuance of the guaranty would not affect the guarantor's liability on existing debts, the lender's execution of an FHA nondisturbance agreement not to repossess or in any way disturb the property of the tenant until a specified date, did not discharge the landowner's liability under the contract of guaranty. Brent v. National Bank of Commerce of Columbus, 258 So. 2d 430, 1972 Miss. LEXIS 1501 (Miss. 1972).

Benefits under statute discharging sureties unless creditor brings suit within specified time after statutory notice held not waived by contract whereby accommodation sureties waived notice of time extension and also waived necessity for creditor first to exhaust remedies against principal. Warren v. W. T. Raleigh Co., 174 Miss. 603, 165 So. 436, 1936 Miss. LEXIS 207 (Miss. 1936).

Stipulation over accommodation indorser's signature held not waiver of right to discharge from liability on creditor's failure to commence proceedings after notice. First Nat'l Bank v. Rau, 146 Miss. 520, 112 So. 688, 1927 Miss. LEXIS 264 (Miss. 1927).

RESEARCH REFERENCES

ALR.

Liability of surety on infant's contract or obligation, where contract is disaffirmed by infant. 44 A.L.R.3d 1417.

Creditor's duty of disclosure to surety or guarantor after inception of suretyship or guaranty. 63 A.L.R.4th 678.

Am. Jur.

74 Am. Jur. 2d, Suretyship §§ 59 et seq.

23 Am. Jur. Pl & Pr Forms (Rev) Suretyship Form 65 (answer alleging as defense of surety failure to proceed against principle).

CJS.

72 C.J.S., Principal and Surety §§ 215, 216 et seq.

§ 87-5-3. Surety paying or tendering the debt.

When any person who is bound as surety or indorser for another on any writing, for the payment of money or other thing, which shall remain unpaid, in whole or in part, by the principal debtor, after the maturity thereof, shall pay or tender to the creditor or holder of such writing the amount due thereon, the creditor or holder shall assign such writing to the surety or indorser paying or tendering the money or other thing due; and such assignee may have an action in his own name against the principal debtor upon the writing, to recover the amount paid in satisfaction of it.

HISTORY: Codes, Hutchinson's 1848, ch. 39, art. 1 (10); 1857, ch. 46, art. 3; 1871, § 2259; 1880, § 999; 1892, § 3277; 1906, § 3732; Hemingway's 1917, § 2908; 1930, § 2958; 1942, § 254.

Cross References — Bonds securing public construction contracts and suits thereon, see §§ 31-5-51 et seq.

Remedy of party paying execution, see § 75-13-9.

RESEARCH REFERENCES

Am. Jur.
74 Am. Jur. 2d, Suretyship §§ 139 et seq.

§ 87-5-5. Surety company may maintain action against defaulting principal.

When any surety or guaranty company has executed any bond or other contract as surety for any person, company or corporation, guaranteeing the performance of any duty or the payment of any money, and such person, company or corporation make default therein and said surety or guaranty company pays the amount for which the party insured or guaranteed is legally liable, the said surety or guaranty company becomes thereby subrogated to all the rights of the party in whose favor the security or guaranty is given, and such company may have and maintain an action against the principal in its own name to recover the amount paid out in satisfaction thereof.

HISTORY: Codes, 1906, § 3733; Hemingway's 1917, § 2909; 1930, § 2959; 1942, § 255.

Cross References — Legislature's power regarding official bonds, see MS Const Art. 4, § 82.

Bonds securing public construction contracts and suits thereon, see §§ 31-5-51 et seq.

Surety companies generally, see §§ 83-27-1 et seq.

JUDICIAL DECISIONS

1. In general.

In addition to paying a premium, the recipient of an indemnity bond must also prove to the surety company that he has adequate assets to permit recovery of some portion of the loss if the bond is ever called upon since a surety may seek reimbursement from the principal after payment on a bond. First Southwest Corp. v. Lampton, 724 So. 2d 988, 1998 Miss. App. LEXIS 1060 (Miss. Ct. App. 1998).

General contractor would be granted relief from stay to assert setoff against prepetition obligations to debtor where general contractor was obliged to pay debtor's materialmen on project. In re E & D Electric Co., 68 B.R. 3, 1986 Bankr. LEXIS 5907 (Bankr. S.D. Miss. 1986).

A surety's right of subrogation is unaffected by the filing requirements of the Uniform Commercial Code, since the assignment in a bond application is in aid of an equitable right but does not create that right, and the rights of the surety to subrogation for its losses are founded upon equitable principles independent of any assignment of contract proceeds in the application of the contractor. Travelers Indem. Co. v. Clark, 254 So. 2d 741, 1971 Miss. LEXIS 1270 (Miss. 1971).

A surety's right to subrogation for amounts paid to materialmen and laborers was not limited to the 10 percent retainage provided for in the construction contract, the contractor's performance of which was guaranteed by the surety, but instead whatever funds were in the hands of the contractor's debtors under such contract at the time of the appointment of a receiver for the contractor should be made available to the surety to the extent necessary to indemnify the surety for losses sustained on the construction project involved. Travelers Indem. Co. v. Clark, 254 So. 2d 741, 1971 Miss. LEXIS 1270 (Miss. 1971).

In an action against a municipal policeman and the surety upon his official bond for assault upon the plaintiff by the policeman, the trial court did not err in refusing to instruct that the surety company would not be liable for anything unless the policeman was first liable and, if the surety was required to pay any part of the judgment, then the individual defendant would be obligated to reimburse the surety for that amount. Vanderslice v. Shoemake, 233 Miss. 523, 102 So. 2d 804, 1958 Miss. LEXIS 411 (Miss. 1958).

A surety on a bond, given in pursuance of this statute, is not entitled to claim against the receiver of the insolvent bank the amount which it paid out as interest and attorney's fees in resisting the state's claim on the bond for the amount of the deposit. Union Indem. Co. v. Stevens, 57 F.2d 839, 1932 U.S. App. LEXIS 4075 (5th Cir. Miss. 1932).

Evidence tending to negative dishonesty or corrupt motives held erroneously excluded in surety's action to recover sum paid on indemnity bond. Seelbinder v. American Surety Co., 155 Miss. 21, 119 So. 357, 1928 Miss. LEXIS 391 (Miss. 1928).

RESEARCH REFERENCES

Am. Jur.

74 Am. Jur. 2d, Suretyship §§ 139 et seq.

23 Am. Jur. Pl & Pr Forms (Rev) Suretyship Forms 4-10 (complaint, petition, or declaration by surety seeking reimbursement from principal).

§ 87-5-7. Surety or indorser, when sued alone, must notify principal and make defense.

A surety or indorser shall not suffer judgment or a decree to be rendered against him by confession or default, without the consent of the principal debtor. And a surety or indorser who shall be sued alone, shall give notice of the suit to the principal debtor, if resident in this state, and if he have knowledge or information of any defense to the action which the principal debtor has, he shall make such defense; and if a surety or indorser, when sued alone, fail to give such notice to the principal debtor, in case he be a resident of this state, or to make such defense in the action of which he has knowledge or information, he shall be barred of all recovery against the principal debtor in case the principal debtor have at the time a good defense to the action of the creditor.

HISTORY: Codes, 1857, ch. 46, art. 4; 1871, § 2260; 1880, § 1000; 1892, § 3278; 1906, § 3734; Hemingway's 1917, § 2910; 1930, § 2960; 1942, § 256.

JUDICIAL DECISIONS

1. In general.

This section is not applicable to an action by a surety against a sheriff to recover on a written contract executed by the sheriff in connection with, and in consideration of, surety's execution as surety of defendant's bond to sheriff. American Surety Co. v. Inmon, 187 F.2d 784, 1951 U.S. App. LEXIS 2312 (5th Cir. Miss. 1951).

Statute relating to liability of surety on sheriff's bond held not in conflict with statute relating to recovery against sureties generally. State ex rel. Weems v. United States Fidelity & Guaranty Co., 157 Miss. 740, 128 So. 503, 1930 Miss. LEXIS 318 (Miss. 1930).

RESEARCH REFERENCES

Am. Jur.
23 Am. Jur. Pl & Pr Forms (Rev) Suretyship Form 1 (notice by surety to principal to defendant action).

§ 87-5-9. Surety paying a judgment.

If a judgment or decree be rendered by any court against a principal debtor and his surety, or against his sureties, and one or more of his sureties shall pay and satisfy the judgment or decree, the same shall, by operation of law, be thereby transferred and assigned to the surety or sureties paying and satisfying it, who shall have all the liens and equities of such judgment or decree and of the debt or claim on which the same is founded, which the creditor therein had. The surety, on making affidavit of his suretyship, and of his having paid the judgment or decree, and filing the affidavit and any evidence of such payment that he may hold, with the officer authorized to issue execution on the judgment or decree to whom he may apply for execution, shall be entitled to have execution issued on the judgment or decree, in the name of the plaintiff or complainant against the defendants therein, as if the judgment or decree had not been paid and satisfied. The officer issuing the execution shall indorse thereon that it is issued for the use of the surety who paid the judgment or decree; and the officer serving it shall collect the money, for the use of the surety, from the principal debtor, if he be a party to the judgment or decree and the money can be made out of him; and, if not, he shall collect a ratable proportion of the money from each of the co-sureties.

HISTORY: Codes, Hutchinson's 1848, ch. 39, art. 2 (160); 1857, ch. 46, art. 2; 1871, § 2258; 1880, § 998; 1892, § 3279; 1906, § 3735; Hemingway's 1917, § 2911; 1930, § 2961; 1942, § 257.

Cross References — Enrollment of judgments and satisfaction thereof, see § 11-7-189.

Remedy of party paying execution, see § 75-13-9.

JUDICIAL DECISIONS

1. In general.

A surety is entitled to subrogation as against the receiver to the extent of all claims paid by it pursuant to the obligation of its bonds. New Amsterdam Casualty Co. v. Wood, 213 Miss. 499, 57 So. 2d 141, 1952 Miss. LEXIS 390 (Miss. 1952).

Subrogation is allowed surety only in the event that the corporation or its receiver may have resources on hand after the payment of the claims of the defrauded stockholders. New Amsterdam Casualty Co. v. Wood, 213 Miss. 499, 57 So. 2d 141, 1952 Miss. LEXIS 390 (Miss. 1952).

Execution issued in the name of the complainant in the decree held not invalid so as to authorize injunction restraining sale thereunder although the decree had been paid by a surety, and the execution had not been endorsed that it was issued for the use of the surety. Edwards Bros. v. Bilbo, 138 Miss. 484, 103 So. 209, 1925 Miss. LEXIS 38 (Miss. 1925).

Surety paying a judgment has all the liens and equities therein that the judgment creditor had, both against the principal and other persons against whom the judgment was rendered. Quinn v. Alexander, 125 Miss. 690, 88 So. 170, 1921 Miss.

LEXIS 147 (Miss. 1921).

Where a bond was conditioned for the principal's personal superintendence of a building, in an action thereon it was error to exclude evidence of expenditures while the principal was absent. First Baptist Church v. Hendricks, 107 Miss. 267, 65 So. 244, 1914 Miss. LEXIS 77 (Miss. 1914).

Surety on a draft cannot recover of the acceptor more than he was compelled to pay to release himself from a judgment thereon. Wainwright v. Atkins, 104 Miss. 438, 61 So. 454, 1913 Miss. LEXIS 49 (Miss. 1913).

Such surety may recover of the principal debtor the full amount paid in satisfaction of the judgment. Wainwright v. Atkins, 104 Miss. 438, 61 So. 454, 1913 Miss. LEXIS 49 (Miss. 1913).

Sureties on the replevin bond of a claimant of goods under attachment, who are the beneficiaries in a deed of trust made to indemnify them against loss by reason of their suretyship, have no right to enforce the deed of trust until a judgment has been rendered against the claimant and paid by them, and in the absence of such right the attaching creditor cannot be subrogated thereto. Weir-Booger Dry Goods Co. v. Kelly, 80 Miss. 64, 31 So. 808, 1902 Miss. LEXIS 257 (Miss. 1902).

A judgment in replevin against principal and surety on a replevin bond, if rendered after the death of the surety, is absolutely void as to both. Weis v. Aaron, 75 Miss. 138, 21 So. 763, 1897 Miss. LEXIS 98 (Miss. 1897), overruled, Bank of Philadelphia v. Posey, 130 Miss. 530, 92 So. 840, 1922 Miss. LEXIS 176 (Miss. 1922).

Under this statute, a surety is subrogated to the rights of the judgment-creditor and to nothing more; and the judgment or decree will be barred in his hands at the same time it would have been barred in the hands of the judgment-creditor. Partee v. Mathews, 53 Miss. 140, 1876 Miss. LEXIS 48 (Miss. 1876).

RESEARCH REFERENCES

Am. Jur.

73 Am. Jur. 2d, Subrogation §§ 53 et seq.

CJS.

83 C.J.S., Subrogation §§ 67 et seq.

§ 87-5-11. Bona fide purchasers and encumbrancers protected.

If such judgment or decree as is referred to in Section 87-5-9 shall appear to be satisfied, either on the judgment-roll, execution docket, or other record, property conveyed or encumbered thereafter by the principal debtor or sureties to any one for a valuable consideration, without notice of the fact that it was paid and satisfied by a surety, shall not be liable to such judgment or decree, unless at the time the property was conveyed or encumbranced, the record which showed the satisfaction of the judgment or decree, shall also show the fact that it was paid and satisfied by a surety, and the name of such surety.

HISTORY: Codes, 1892, § 3280; 1906, § 3736; Hemingway's 1917, § 2912; 1930, § 2962; 1942, § 258.

Cross References — Conveyances and mortgages being made void if not lodged for record, see § 89-5-3.

JUDICIAL DECISIONS

1. In general.

While under § 87-5-9, mere payment of a judgment by a surety does not release the principal or co-sureties, and execution may issue against them, where a surety who pays a judgment procures the plaintiff to indorse upon the record of the judgment a receipt reciting that it is "in full payment of this judgment and the same is fully satisfied, and she is authorized to do therewith as she sees proper," the judgment cannot afterwards be asserted as against a subsequent bona fide purchaser of lands from the principal debtor. Taylor v. Alliance Trust Co., 71 Miss. 694, 15 So. 121, 1893 Miss. LEXIS 81 (Miss. 1893); Yates v. Mead, 68 Miss. 787, 10 So. 75 (Miss. 1891).

§ 87-5-13. Execution against principal and sureties; how served.

When execution shall issue on any judgment or decree rendered against a principal and surety, and the surety shall make affidavit that he is only surety on the instrument upon which the judgment or decree is founded, and deliver it to the officer serving the execution, the officer shall make the money, or as much thereof as possible, out of the property of the principal debtor, if he have any in the county to which the execution is issued subject to execution; and the officer shall return the affidavit with the execution.

HISTORY: Codes, Hutchinson's 1848, ch. 39, art. 3 (47); 1857, ch. 46, art. 5; 1871, § 2261; 1880, § 1001; 1892, § 3281; 1906, § 3737; Hemingway's 1917, § 2913; 1930, § 2963; 1942, § 259.

Cross References — How executions are issued and returned, see § 13-3-113.

JUDICIAL DECISIONS

1. In general.

If the fact of suretyship does not so appear, the affidavit of the surety is necessary. Walker v. Gilbert, 21 Miss. 693, 1850 Miss. LEXIS 87 (Miss. 1850); Work v. Harper, 31 Miss. 107, 1856 Miss. LEXIS 42 (Miss. 1856).

When the fact of suretyship appears on the execution in the hands of the officer, the affidavit of the surety is not necessary. Moss v. Agricultural Bank, 12 Miss. 726, 1841 Miss. LEXIS 69 (Miss. 1841).

CHAPTER 7.

IMPROVEMENTS TO REAL PROPERTY

Sec.

87-7-1.	Repealed.
87-7-3.	Payment of contractors; penalty for late payment.
87-7-5.	Proportional payment of subcontractors; penalty for late payment.
87-7-7.	Contractor negotiation of draft payable to contractor and other parties; written signed authorization of co-payees required; penalties.
87-7-9.	Contracts, subcontracts or purchase orders with provisions relating to real property improvement that make the contract subject to laws of another state or restrict forum for litigation, arbitration or dispute resolution to another state are void; applicability.

§ 87-7-1. Repealed.

Repealed by Laws, 1985, ch. 505, § 16, effective from and after January 1, 1986.

§ 87-7-1. [En, Laws, 1985, ch. 335]

Editor's Notes — Former Section 87-7-1 provided for payments to subcontractors and suppliers.

§ 87-7-3. Payment of contractors; penalty for late payment.

All sums due contractors under all construction contracts, except public construction contracts, shall be paid as follows:

(a) Partial, progress or interim payments: all partial, progress or interim payments or monies owed contractors shall be paid when due and payable under the terms of the contract. If they are not paid within thirty (30) calendar days from the day they were due and payable, then they shall bear interest from the due date at the rate of one percent (1%) per month until fully paid.

(b) Final payments: The final payment of all monies owed contractors shall be due and payable:

(i) At the completion of the project or after the work has been substantially completed in accordance with the terms and provisions of the contract;

(ii) When the owner beneficially uses or occupies the project except in the case where the project involves renovation or alteration to an existing facility in which the owner maintains beneficial use or occupancy during the course of the project; or

(iii) When the project is certified as having been completed by the architect or engineer authorized to make such certification, whichever event shall first occur.

If the contractor is not paid in full within thirty (30) calendar days from the first occurrence of one (1) of the above-mentioned events, then the final payment shall bear interest from the date of such first occurrence at the rate of one percent (1%) per month until fully paid.

In no event shall the final payment due the contractor be made until the consent of the contractor's surety has been obtained in writing and delivered to the proper contracting authority.

HISTORY: Laws, 1985, ch. 505, § 3; Laws, 2006, ch. 330, § 1, eff from and after July 1, 2006.

JUDICIAL DECISIONS

ANALYSIS

1. Prejudgment interest not available.
2. Requirement of a contract with party to be charged.
3. Liquidated damages requirement.

1. Prejudgment interest not available.

Award of prejudgment interest under Miss. Code Ann. § 75-17-1 in a contractor's claim was error because the principal amount was not fixed before judgment and was unliquidated; the amount of claim was clearly in dispute, there was no finding that the owners disputed the amount owed in bad faith, and the trial court resorted to quantum meruit to fix the exact amount of damages. The same considerations which precluded a recovery of prejudgment interest for unliquidated amounts owed under § 75-17-1 applied to Miss. Code Ann. § 87-7-3. Falkner v. Stubbs, 2013 Miss. LEXIS 65 (Miss. Mar. 7, 2013).

2. Requirement of a contract with party to be charged.

While plaintiff contractor was entitled to certain legal fees and amounts due under a settlement agreement with defendants, a lessor and lessee of renovated property, its construction contact was only with the lessee and thus, no statutory penalties were available against the lessor under Miss. Code Ann. § 87-7-3. The Stellar Group v. Pilgrim's Pride Corp., 2007 U.S. Dist. LEXIS 85242 (S.D. Miss. Nov. 13, 2007).

3. Liquidated damages requirement.

Where appellee's recovery was based on an oral contract, he was not entitled to prejudgment interest because there was a bona fide dispute as to the amount of damages, and prejudgment interest was unavailable under Miss. Code Ann. §§ 75-17-1 or 87-7-3 where the damages were unliquidated. Falkner v. Stubbs, 121 So. 3d 899, 2013 Miss. LEXIS 428 (Miss. 2013).

§ 87-7-5. Proportional payment of subcontractors; penalty for late payment.

When a contractor receives any payment from the owner under a construction contract, other than a public construction contract, the contractor shall, upon receipt of that payment, pay each subcontractor and material supplier in proportion to the percentage of work completed by each such subcontractor and material supplier. If for any reason the contractor receives less than the full payment due from the owner, the contractor shall be obligated to disburse on a pro rata basis those funds received, with the contractor, subcontractors and material suppliers each receiving a prorated portion based on the amount due on the payment. If the contractor without reasonable cause fails to make any payment to his subcontractors and material suppliers within fifteen (15) days after the receipt of payment from the owner under the construction contract, the contractor shall pay to his subcontractors and material suppliers, in addition to the payment due them, a penalty in the amount of one-half of one percent (½ of 1%) per day of the delinquency, calculated from the expiration of the fifteen-day period until fully paid. The total penalty shall not exceed fifteen percent (15%) of the outstanding balance due. The provisions of this section shall not be applicable to contracts for the construction of single-family dwellings.

HISTORY: Laws, 1985, ch. 505, § 4; Laws, 2006, ch. 330, § 2, eff from and after July 1, 2006.

§ 87-7-7. Contractor negotiation of draft payable to contractor and other parties; written signed authorization of co-payees required; penalties.

(1) A contractor who undertakes to negotiate a draft made payable to the contractor and any other party must first obtain an endorsement or other written signed authorization of every co-payee on the draft if the draft is tendered in payment for materials or equipment furnished or labor performed by the owner, laborer, supplier or equipment dealer.

(2) A contractor who negotiates a draft without first obtaining an endorsement or other written signed authorization required under this section is guilty of a misdemeanor and shall be subject to a fine not to exceed Five Hundred Dollars ($500.00) per violation, and shall also be ordered by the court to make full restitution to the owner, laborer, supplier or equipment dealer who is entitled to payment from the proceeds of the draft, as well as reasonable attorney's fees incurred by any party to whom restitution is ordered.

HISTORY: Laws, 2012, ch. 506, § 1, eff from and after July 1, 2012.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 87-7-9. Contracts, subcontracts or purchase orders with provisions relating to real property improvement that make the contract subject to laws of another state or restrict forum for litigation, arbitration or dispute resolution to another state are void; applicability.

(1) A provision in any contract, subcontract, or purchase order for the improvement of real property in this state, or to provide materials therefor, is void and against public policy if it makes the contract, subcontract, or purchase order subject to the laws of another state, or provides that the exclusive forum for any litigation, arbitration, or other dispute resolution process be located in another state.

(2) The provisions of this section apply only to contracts, agreements and purchase orders:

(a) Entered into on or after July 1, 2018;

(b) Only if at least one (1) of the parties is a Mississippi resident; and

(c) Only if entered into between any two (2) or more of the following persons and no others: the owner of the real property improved or to be improved, a contractor, subcontractor, materialman or design professional. As used in this section, "contractor", "subcontractor", "materialman" and "design professional" shall have the meanings ascribed in Section 85-7-401.

(3) For purposes of this section, "Mississippi resident" means any natural person domiciled in Mississippi or any business entity having a principal place of business in Mississippi.

HISTORY: Laws, 2018, ch. 455, § 1, eff from and after July 1, 2018.

CHAPTER 9.

GENERAL PROVISIONS

Sec.
87-9-1. Manufacturer's taxes required to be paid under contract; alteration of timing; security.

§ 87-9-1. Manufacturer's taxes required to be paid under contract; alteration of timing; security.

(1) When a contract calls for one (1) party to reimburse the other party for the federal manufacturer's excise tax levied by 26 USCA 4081 through 26 USCA 4083, whether as a separate item or as part of the price, the party required to make the reimbursement may tender payment for the taxes one (1) business day before the time that the other party is required to remit the taxes to the United States Internal Revenue Service.

(2) If a party elects to make payment as provided in subsection (1) of this section, the other party may demand security for the payment of the taxes in proportion to the amount the taxes represent compared to the security demanded on the contract as a whole. The other party may not change the other payment terms of the contract without a valid business reason other than the exercise of the option as provided in subsection (1) of this section, except to require the payment of the taxes under the option to be made by electronic transfer of funds.

(3) The party exercising the option set out in subsection (1) of this section shall notify the other party in writing of the intent to exercise the payment option and the effective date of the exercise which shall not be earlier than thirty (30) days after the notice of intent is received or the beginning of the next federal tax quarter, whichever is later.

(4) This section shall apply to all contracts now in effect which have no expiration date and are continuing contracts and to all other contracts entered into or renewed from and after July 1, 1994. Specifically, this section shall apply to contracts arising from daily wholesale price offers which are accepted or rejected by the acceptance or rejection of products at the stated prices. Each daily price offering shall be construed to be a new offer and each purchase of product at a given price offer to create a new contract to which this section shall apply. Any contract in force and effect on July 1, 1994, which, by its own terms, will terminate on a subsequent date, shall be governed by the law as it existed before July 1, 1994.

(5) The option provided for in subsection (1) of this section shall not be construed to impair the obligations arising under any contract executed before July 1, 1994. The exercise of an option as set out in subsection (1) of this section

shall not relieve the party of the obligation to make the reimbursement as provided for in the contract but shall affect only the timing of when that reimbursement shall be tendered.

HISTORY: Laws, 1994, ch. 395, § 1, eff from and after July 1, 1994.

TITLE 89.

REAL AND PERSONAL PROPERTY

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CHAPTER 1.

LAND AND CONVEYANCES

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IN GENERAL

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§ 89-1-1. Land conveyed to vest immediately or in future.

Any interest in or claim to land may be conveyed to vest immediately or in the future, by writing signed and delivered; and such writing shall have the effect to transfer, according to its terms, the title of the person signing and delivering it, with all its incidents, as fully and perfectly as if it were transferred by feoffment with livery of seizin, notwithstanding there may be an adverse possession thereof.

HISTORY: Codes, 1857, ch. 36, art. 1; 1871, § 2284; 1880, § 1187; 1892, § 2433; 1906, § 2762; Hemingway's 1917, § 2266; 1930, § 2110; 1942, § 831.

Cross References — Definition of term "land" see § 1-3-25.
Definition of term "written," see § 1-3-61.
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JUDICIAL DECISIONS

ANALYSIS

1. In general.
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3. Deed in consideration of support.
4. Conveyance of future interest.
5. Conveyance to take effect in future.
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11. — —Notice.
12. Effect of grantor's mental state.
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14. Construction of particular terms.
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1. In general.

In suit to cancel recorded deed, where nondelivery of deed is alleged, the burden of proving nondelivery is on one claiming nondelivery. Wilbourn v. Wilbourn, 204 Miss. 206, 37 So. 2d 256, 1948 Miss. LEXIS 356 (Miss. 1948).

This section [Code 1942, § 831] is applicable to devises by will, as well as to conveyances by deed, since a will is a writing signed under an authorization for delivery upon the happening of the event which is to vest title in the devisee. Ricks v. Merchants Nat'l Bank & Trust Co., 191 Miss. 323, 2 So. 2d 344, 1941 Miss. LEXIS 128 (Miss. 1941).

Statute held to remove all restraints on transfer of real estate. Hamilton v. Jackson, 157 Miss. 284, 127 So. 302, 1930 Miss. LEXIS 255 (Miss. 1930).

This section practically abolishes the doctrine of champerty in reference to lands. Cassedy v. Jackson, 45 Miss. 397, 1871 Miss. LEXIS 89 (Miss. 1871), limited, Wallace v. Okolona Sav. Institute, 49 Miss. 616, 1873 Miss. LEXIS 153 (Miss. 1873).

2. Character of instrument as deed or will.

A purported conveyance of "all my right, title, interest and claim in and to" described lands, stating that it is understood that the grantor "shall have and hold all her right and title to above described property so long as she shall live, but at her death [grantee] shall claim and hold all right and title", operates as a present conveyance with reservation of a life estate, and is not invalid as an attempted testamentary disposition. Buchanan v. Buchanan, 236 Miss. 751, 112 So. 2d 224, 1959 Miss. LEXIS 372 (Miss. 1959).

An instrument, which was executed and acknowledged in form of a deed and duly delivered and the consideration therefor paid, and which by its plain terms immediately vested the title to the land in the grantee, subject only to the reservation of the right of possession of the grantor as long as he lived, must be given effect as a valid deed. Tanner v. Foreman, 212 Miss. 355, 54 So. 2d 483, 1951 Miss. LEXIS 456 (Miss. 1951).

An instrument in the words and form of, and describing itself as, a deed, acknowledged and recorded as a deed, is a deed and not a will notwithstanding a provision reserving a life estate to grantor and that title should vest in grantee at grantor's death. Watts v. Watts, 198 Miss. 246, 22 So. 2d 625, 1945 Miss. LEXIS 190 (Miss. 1945).

Instrument purporting to convey land to grantee for consideration of $10 and other valuable consideration, providing that grantee was to cultivate the land free of rent, pay the taxes, and support grantor during the remainder of her life, title not to pass until grantor's death, was a "deed" rather than a "will," whereby grantee acquired, during grantor's lifetime, title charged with obligation to support grantor for balance of her life. Hald v. Pearson, 197 Miss. 410, 20 So. 2d 71, 1944 Miss. LEXIS 308 (Miss. 1944).

In determining whether an instrument is a deed or a will, the court must ascertain and give effect to intention of the parties as gathered from entire instrument, in light of circumstances surrounding its execution. Carter v. Dabbs, 196 Miss. 692, 18 So. 2d 747, 1944 Miss. LEXIS 250 (Miss. 1944).

The difference between a deed and a will is that by means of the former a present interest passes, while the latter takes effect only at the death of the testator. Hald v. Pearson, 197 Miss. 410, 20 So. 2d 71, 1944 Miss. LEXIS 308 (Miss. 1944); Watts v. Watts, 198 Miss. 246, 22 So. 2d 625, 1945 Miss. LEXIS 190 (Miss. 1945).

Instruments labeled warranty deeds, containing operative words of conveyance usual to warranty deeds, whereby grantors, who intended to execute deeds, purported to convey land in fee simple reserving to themselves a house and the use of pasture and ten acres, were deeds and not wills, notwithstanding provision, following grantee's promise to pay specified annual amounts to grantors until their deaths, that at that time the property is to be the grantee's, where instruments also provided that if grantee failed to make full annual payments the "deeds" are null and void. Carter v. Dabbs, 196 Miss. 692, 18 So. 2d 747, 1944 Miss. LEXIS 250 (Miss. 1944).

Instrument conveying land, postponing possession and use of land by grantee until grantor's death, was valid deed and not a will. Graham v. Triplett, 148 Miss. 299, 114 So. 621, 1927 Miss. LEXIS 63 (Miss. 1927).

Instrument granting all property that grantor might die seized and possessed of, with provision that grantee pay certain sums to relatives held a will and not a deed. Martin v. Graham, 114 Miss. 653, 75 So. 447, 1917 Miss. LEXIS 76 (Miss. 1917).

Estimate in form of deed held to be deed and not will, though using words "I will this property." Brinson v. Sandifer, 90 Miss. 41, 42 So. 89, 1907 Miss. LEXIS 30 (Miss. 1907).

3. Deed in consideration of support.

Deed for support of grantor not cancelled for breach of agreement where it provides no lien, nor forfeiture on condition broken; such deed not set aside on ground grantor did not understand terms, in absence of timely application. Wynn v. Kendall, 122 Miss. 809, 85 So. 85, 1920 Miss. LEXIS 477 (Miss. 1920).

Deed in consideration of support of grantor not cancelled for failure to perform agreement where it contained no provision for forfeiture and reserved no liens to secure performance. Lowrey v. Lowrey, 111 Miss. 153, 71 So. 309, 1916 Miss. LEXIS 258 (Miss. 1916).

4. Conveyance of future interest.

This statute removes all restraints on

the inter vivos transfer of interests in real estate whether present or future. Hemphill v. Mississippi State Highway Com., 245 Miss. 33, 145 So. 2d 455, 1962 Miss. LEXIS 529 (Miss. 1962).

This statute makes good as a deed a conveyance of a future interest. Buchanan v. Buchanan, 236 Miss. 751, 112 So. 2d 224, 1959 Miss. LEXIS 372 (Miss. 1959).

Where a testatrix devised to her two daughters a life interest in certain real estate with the remainder over to their descendants, bequeathed one dollar each to her other children, and devised to the same two daughters the rest of her estate both real and personal, the two daughters having no children, took a fee to the realty. Oliphant v. Skelton, 230 Miss. 518, 93 So. 2d 181, 1957 Miss. LEXIS 392 (Miss. 1957).

A conveyance of a life estate by the holder thereof to the remaindermen named in the deed to the grantor is valid. Ricks v. Riddell, 200 Miss. 122, 26 So. 2d 782, 1946 Miss. LEXIS 273 (Miss. 1946).

Conveyance of remainder reserving life estate in grantors held valid. Stubblefield v. Haywood, 123 Miss. 480, 86 So. 295, 1920 Miss. LEXIS 46 (Miss. 1920).

5. Conveyance to take effect in future.

Instrument executed by owner and wife purporting to convey land to son, containing provision that "this deed of conveyance is not to be delivered, or so considered delivered during" the lives of the grantors, but death of both shall constitute a full and complete delivery, and the land shall immediately vest in fee simple in him, was testamentary in character and ineffective as a deed; and the surviving grantor and widow of the owner could not effectively make a delivery upon her deathbed, as she was without power to amend the intention and purpose of her deceased husband. Palmer v. Riggs, 197 Miss. 256, 19 So. 2d 807, 1944 Miss. LEXIS 293 (Miss. 1944).

Conveyances by instruments to take effect at maker's death are not within rule that conveyances may be made to vest in future, since instruments conveying interests to vest in future must take effect in praesenti, and maker must part with all right to thereafter dispose of land otherwise. Tapley v. McManus, 175 Miss. 849, 168 So. 51, 1936 Miss. LEXIS 72 (Miss. 1936).

Instrument in form of deed, not to become effective until death of maker, is testamentary and cannot operate as a deed. Tapley v. McManus, 175 Miss. 849, 168 So. 51, 1936 Miss. LEXIS 72 (Miss. 1936).

In instrument conveying land to take effect after maker's death, habendum clause that grantee should have and hold premises to her, her heirs and assigns forever, did not modify express testamentary provisions so as to convey present interest, but only limited and defined estate granted. Tapley v. McManus, 175 Miss. 849, 168 So. 51, 1936 Miss. LEXIS 72 (Miss. 1936).

Instrument in form of deed, not to become effective until death of maker, cannot operate as a deed, so that maker of such instrument could have it canceled on ground that grantee was attempting to interfere with maker's use and occupation of land. Tapley v. McManus, 175 Miss. 849, 168 So. 51, 1936 Miss. LEXIS 72 (Miss. 1936).

Instrument providing that, in consideration of donee caring for her during life, donor did "bargain, sell, convey and warrant" to him land, but providing transfer not to take effect until death of donor, is not a valid deed. Kelly v. Covington, 119 Miss. 658, 81 So. 485, 1919 Miss. LEXIS 44 (Miss. 1919).

6. Restrictive covenants.

In suit to quiet title to land in which decree involves meaning of restriction in deed against operation on property of textile industry, decree for neither side can rest on testimony of experts in textile trade as to meaning of term "textile industry" when their own disagreement and divergence of understanding of its significance make manifest that phrase is ambiguous and not solvable by uniform trade understanding. Magnolia Textiles, Inc. v. Gillis, 206 Miss. 797, 41 So. 2d 6, 1949 Miss. LEXIS 302 (Miss. 1949).

In suit to quiet title, when phrase in restrictive covenant is shown by expert witnesses to be ambiguous, situation justifies resort to further aid of construction, that of negotiations and conversations leading up to adoption of restrictive covenant. Magnolia Textiles, Inc. v. Gillis, 206 Miss. 797, 41 So. 2d 6, 1949 Miss. LEXIS 302 (Miss. 1949).

Provision in deed to school trustees that in case land ceased to be used as school property land was to revert back to grantor became effective when trustees abandoned building on land, transferred pupils to another consolidated school, enlarged its facilities through successive bond issues and serviced pupils of old school district by busses from new school, and heirs of grantor took possession of property, destroyed buildings without objection by trustees, placed land upon tax rolls and asserted dominion over land. James v. Gulf Refining Co., 206 Miss. 781, 41 So. 2d 2, 1949 Miss. LEXIS 300 (Miss. 1949).

Restrictions intended to limit the use of property to a particular purpose should be clearly defined and understood by the parties. Frederic v. Merchants & Marine Bank, 200 Miss. 755, 28 So. 2d 843, 1947 Miss. LEXIS 359 (Miss. 1947).

A resolution in the minutes of the board of directors of a grantor bank which recited that the proposed grantee explained that land would be used for a specified purpose, even if such recitals had been contained in the deed of conveyance, did not impose an enforceable restriction on the use of the property. Frederic v. Merchants & Marine Bank, 200 Miss. 755, 28 So. 2d 843, 1947 Miss. LEXIS 359 (Miss. 1947).

Where grantors conveyed property to be held by grantee as long as it should be used for waterworks purposes, and later delivered deed to another, city claiming under both deeds owned fee simple title. Hamilton v. Jackson, 157 Miss. 284, 127 So. 302, 1930 Miss. LEXIS 255 (Miss. 1930).

Intent to subject estates to restrictions on alienation or encumbrance or liability for life tenant's debts must be clearly expressed. Montroy v. Phillips, 134 Miss. 345, 98 So. 775, 1924 Miss. LEXIS 261 (Miss. 1924).

7. Reservations and exceptions.

A reservation in a deed whereby the grantors purported to retain a reversionary interest in minerals was ambiguous and would be construed against the grantors where the grantors did not own a reversionary interest, but owned only a remainder in the mineral interest. Deason v. Cox, 527 So. 2d 624, 1988 Miss. LEXIS 209 (Miss. 1988).

Grantee who accepts deed containing reservation or exception of all minerals in lands conveyed with full knowledge of language and import of deed cannot obtain reformation of deed to eliminate reservation, despite his dissatisfaction and protestations at time of its execution. Holland v. Bass, 45 So. 2d 743 (Miss. 1950).

Reservation in deed of all minerals made part of consideration is not inconsistent with status of deed as being cast in warranty form. Holland v. Bass, 45 So. 2d 743 (Miss. 1950).

Provision in deed reserving life estate to grantor and providing that title should vest in grantee at grantor's death does not postpone vesting of title until death of grantor but passes an immediate interest or right, with full enjoyment thereof, postponed until grantor's death. Watts v. Watts, 198 Miss. 246, 22 So. 2d 625, 1945 Miss. LEXIS 190 (Miss. 1945).

Reservation of an undivided one-fourth interest in all minerals, oil and gas "that might hereafter be discovered on the lands herein described," reserved to grantor and its assignees a present, undivided one-fourth interest in the minerals that might be found in the land, as tenants in common of the grantee, with the right, by necessary implication from the reservation itself, to enter upon the land to ascertain the presence of and remove minerals that might lie therein. McNeese v. Renner, 197 Miss. 203, 21 So. 2d 7, 1945 Miss. LEXIS 286 (Miss. 1945).

In order for a reservation in a deed to be operative it must withhold from the grant something which would have passed by the deed but for the reservation. Barataria Canning Co. v. Ott, 84 Miss. 737, 37 So. 121, 1904 Miss. LEXIS 90 (Miss. 1904).

If there is a patent ambiguity in the description of land excepted from a conveyance, the exception, not the deed, is void for uncertainty. McAllister v. Honea, 71 Miss. 256, 14 So. 264, 1893 Miss. LEXIS 163 (Miss. 1893).

8. Vesting of title in grantee—generally.

Quitclaim deed to 80 acres of farmland in Mississippi which an Alabama corporation claimed it received from a real estate investment company ("debtor") before the debtor declared bankruptcy was invalidunder Miss. Code Ann. § 89-1-1 because it was not signed by an individual who had the power to represent the debtor, and even if the deed was somehow valid, a trustee who was appointed to administer the debtor's Chapter 7 bankruptcy case had the power under 11 U.S.C.S. § 544 to avoid the deed because the deed was not recorded before the debtor declared bankruptcy. Smith v. Dynasty Grp., Inc. (In re Heritage Real Estate Inv., Inc), 2017 Bankr. LEXIS 3618 (Bankr. S.D. Miss. Oct. 17, 2017).

Earlier instrument sufficed to transfer the father's partnership interest in the subject property to the son where the instrument had been signed, sealed, and delivered, it evinced the father's intent to transfer title to all partnership property to the son, and the property had been purchased and treated as partnership property. White v. White (In re White), 234 So. 3d 1210, 2017 Miss. LEXIS 351 (Miss. 2017).

Decedent's transfer of land to herself as trustee for the benefit of her four children and the heirs at law of any of such children who should die during the continuance of the trust, with provision for distribution of the trust to the beneficiaries upon the death of the trustee or her termination of the trust, vested the property in the trustee and beneficiaries so that trust property was not part of decedent's gross estate so as to be subject to federal estate taxes. Hays' Estate v. Commissioner, 181 F.2d 169, 1950 U.S. App. LEXIS 4012 (5th Cir. 1950).

Execution by husband and wife of deed to homestead property to son, delivery of deed to clerk and its recordation, son being overseas in war, vested record and legal title to property in son, which could not be destroyed by destruction of recorded deed by mother. Wilbourn v. Wilbourn, 204 Miss. 206, 37 So. 2d 256, 1948 Miss. LEXIS 356 (Miss. 1948).

One who by his tenant is in actual possession under a deed to a part of a tract of land conveyed to him thereby, there being no adverse possession, is deemed in legal possession of the whole tract conveyed. Houston v. National Mut. Bldg. & Loan Ass'n, 80 Miss. 31, 31 So. 540, 1902 Miss. LEXIS 314 (Miss. 1902); Seals v. Williams, 80 Miss. 234, 31 So. 707, 1902 Miss. LEXIS 236 (Miss. 1902).

9. —Extent of rights acquired.

Deed to property executed by wife conveys only interest in property owned by her, which is an undivided one-half interest when wife owns interest by reason of deed naming husband and wife as grantees, and deletion of husband's name from deed after its delivery to grantees does not increase interest of wife in property. Prater v. Prater, 208 Miss. 59, 43 So. 2d 582, 1949 Miss. LEXIS 408 (Miss. 1949).

Conveyance by cotenant of all his right, title and interest, conveys to grantee merely such right as grantor has in land, usual covenants are restricted to such interest, and grantee becomes substituted for grantor as tenant in common with other tenants. Howard v. Wactor, 41 So. 2d 259 (Miss. 1949).

Deed to railroad of a right-of-way for 200 feet through land of grantor, identifying no particular strip with that certainty which a conveyance of the fee would require, and reserving to grantor rights as to timber and of cultivation, conveyed only a floating easement or right of usage. New Orleans & N. R. R. v. Morrison, 203 Miss. 791, 35 So. 2d 68, 1948 Miss. LEXIS 323 (Miss. 1948).

Where an easement will satisfy the purpose of the grant, a fee will not be included in the grant unless expressly provided. New Orleans & N. R. R. v. Morrison, 203 Miss. 791, 35 So. 2d 68, 1948 Miss. LEXIS 323 (Miss. 1948).

Where a life estate is created by a deed which provides that the holder shall have a fee-simple title should the remaindermen predecease the life tenant, without issue the life tenant, by virtue of such provision, has an executory interest in the land which is not conveyed in a deed of the life estate from the holder thereof to the remaindermen, and the grantees of the life estate cannot convey a fee-simple title on the strength of such conveyance to them of the life estate. Ricks v. Riddell, 200 Miss. 122, 26 So. 2d 782, 1946 Miss. LEXIS 273 (Miss. 1946).

A deed to a strip of land limiting the grantee's interest to "a private easement or for street purposes only" does not authorize the grantee to take exclusive possession of the land. Lott v. Payne, 82 Miss. 218, 33 So. 948, 1903 Miss. LEXIS 121 (Miss. 1903).

The grantee in a deed conveying only title to land cannot maintain trespass as assignee of the grantor. Blodgett v. Seals, 78 Miss. 522, 29 So. 852, 1900 Miss. LEXIS 180 (Miss. 1900).

A grantee's covenant to pay a stipulated rent, contained in and constituting the consideration of the deed to him, is binding between the assignee of the covenant and the assignee of the land in fee. Wright v. Hardy, 76 Miss. 524, 24 So. 697, 1898 Miss. LEXIS 96 (Miss. 1898).

A conveyance of land vests in the grantee by way of assignment all rights of action and defense that his grantor had in respect thereto. Fink v. Henderson, 74 Miss. 8, 19 So. 892, 1896 Miss. LEXIS 97 (Miss. 1896).

10. —Priority of other interests.

A grantee in a voluntary conveyance takes subject to all existing equities against his grantor, and cannot afterward acquire the lands at or through a tax sale freed from such equities if the grantor could not have done so. North American Trust Co. v. Lanier, 78 Miss. 418, 28 So. 804, 1900 Miss. LEXIS 81 (Miss. 1900).

A grantee of land takes subject to a prior unrecorded deed from his grantor of which he has actual notice. Henderson v. Cameron, 73 Miss. 843, 20 So. 2, 1896 Miss. LEXIS 213 (Miss. 1896).

11. — —Notice.

A purchaser of land from a life tenant is not entitled to recover from the remainderman, or have a lien on the remainder interest, for the cost of improvements made on the property by him, and equity will not, on the mere ground of the remainderman's silence, relieve one who is perfectly acquainted with his rights, or has the means of becoming so, by examining the land records or otherwise, and the purchaser from the life tenant may not claim the benefit of an estoppel when he does not examine the land records, even if the true owner remains silent at a time when he knows another is about to purchase the land or make improvements thereon. Collier v. King, 251 Miss. 607, 170 So. 2d 632, 1965 Miss. LEXIS 888 (Miss. 1965).

Purchaser of land with notice from public records that owner is dead at the time is charged with constructive notice of whether or not owner left will, if not, who were heirs at law, and whether debts of deceased had been paid. Howard v. Wactor, 41 So. 2d 259 (Miss. 1949).

Mortgagee for value and without notice, not chargeable with unrecorded assignment of lease. Corinth Bank & Trust Co. v. Wallace, 111 Miss. 62, 71 So. 266, 1916 Miss. LEXIS 241 (Miss. 1916).

Deed to land with "party wall agreement and party ownership agreement thereunto appertaining, and easements and tenements," sufficient to put grantee on notice of any such encumbrances. Binder v. Weinberg, 94 Miss. 817, 48 So. 1013, 1909 Miss. LEXIS 363 (Miss. 1909).

12. Effect of grantor's mental state.

The grantees of a deed, who had a fiduciary relationship with the grantor, overcame the presumption of undue influence in the execution of the deed, where the grantor, along with her 3 children, initiated seeking preparation of the deed, the grantor expressed her intent to convey the property to the grantees several weeks prior to the execution of the deed, the attorney who prepared the deed testified that the grantor knew what she was doing when the deed was executed, and the grantor remained in complete control of her finances at all times. Vega v. Estate of Mullen, 583 So. 2d 1259, 1991 Miss. LEXIS 119 (Miss. 1991).

Marriage ties alone do not constitute a "confidential relationship" sufficient to raise a presumption of undue influence. Smith v. Smith, 574 So. 2d 644, 1990 Miss. LEXIS 787 (Miss. 1990), aff'd, 672 So. 2d 1194, 1996 Miss. LEXIS 226 (Miss. 1996).

The date of execution of the deed should be the critical time when considering the standard of "weakness of intellect" or "great weakness of mind" with respect to the mental capacity to execute a deed. Furthermore, the "before and after" rule, applied in cases of permanent insanity, should not apply in cases involving a "weakness of intellect. Smith v. Smith, 574 So. 2d 644, 1990 Miss. LEXIS 787 (Miss. 1990), aff'd, 672 So. 2d 1194, 1996 Miss. LEXIS 226 (Miss. 1996).

There was sufficient evidence to rebut a presumption of undue influence with respect to the conveyance of a farm by a father to his sons where the father was "very sharp" mentally, aware of his family and finances, strong-willed, and, although he lived with one of the grantees at the time of the conveyance, also lived at various times with others and, therefore, was not solely dependant on the grantees. Miner v. Bertasi, 530 So. 2d 168, 1988 Miss. LEXIS 368 (Miss. 1988).

The burden of proving lack of mental capacity rests on the party seeking to have the deed of conveyance set aside. Clear and convincing evidence is required to establish lack of mental capacity and the crucial time in such incapacity is when the document is executed. In re Conservatorship of Stevens, 523 So. 2d 319, 1988 Miss. LEXIS 95 (Miss. 1988).

In order to be capable of executing deed, grantor must have mentality sufficient to enable him to understand and appreciate the nature and effect of the transaction. Puryear v. Austin, 205 Miss. 590, 39 So. 2d 257, 1949 Miss. LEXIS 449 (Miss. 1949).

Deed of well-educated man signed by mark, shortly before death, at time when blood transfusion was being administered and when grantor was of advanced age, ravaged by disease, weak and irrational, conveying all grantor's property to his brother, without consideration, and including in description in deed land and lease not owned by grantor and about which he made no comment, is entirely void because of grantor's mental incapacity. Puryear v. Austin, 205 Miss. 590, 39 So. 2d 257, 1949 Miss. LEXIS 449 (Miss. 1949).

Deed from mother to two daughters is not presumptively void because of confidential relationship between parties, or because of undue influence, when parties lived in residence together, mother could not speak English and daughters acted as her agents in all her business transactions and acted as her interpreters. Dantone v. Dantone, 205 Miss. 420, 38 So. 2d 908, 1949 Miss. LEXIS 439 (Miss. 1949).

13. Delivery and acceptance of deed.

Where a widow assigned and acknowledged a warranty deed conveying her farm to her niece, reserving a life estate to herself, which deed was handed to her brother with the instructions to keep and deliver it to the niece upon the widow's death, which instructions were followed, there was a valid delivery from the widow to the niece in view of the undisputed testimony that the grantor reserved no right to recall the deed, and that the delivery to the brother was unequivocally to hold for the niece. Myers v. Laird, 230 Miss. 675, 93 So. 2d 828, 1957 Miss. LEXIS 409 (Miss. 1957).

Grantee manifests acceptance of deed when, upon discovery of recorded deed, he claims property conveyed and takes possession. Wilbourn v. Wilbourn, 204 Miss. 206, 37 So. 2d 256, 1948 Miss. LEXIS 356 (Miss. 1948).

Delivery of deed, after proper execution, to chancery clerk for recording is constructive delivery to grantee when it is apparent either from words or acts of grantor that it is his intention to treat deed as being delivered. Wilbourn v. Wilbourn, 204 Miss. 206, 37 So. 2d 256, 1948 Miss. LEXIS 356 (Miss. 1948).

A valid conveyance presupposes a complete delivery, which does not mean a mere manual possession of the document of conveyance, but a transfer, as by livery of seizin, which constitutes a deliberate present investiture of title. Palmer v. Riggs, 197 Miss. 256, 19 So. 2d 807, 1944 Miss. LEXIS 293 (Miss. 1944).

A deed made to two grantees may be delivered to and accepted by one of them so as to invest him with an undivided interest in the land and yet be ineffectual as to the other for want of a delivery to and acceptance on his part. Chapman v. White Sewing-Mach Co., 76 Miss. 821, 25 So. 868, 1899 Miss. LEXIS 24 (Miss. 1899), modified, Chapman v. White Sewing-Mach. Co., 77 Miss. 890, 28 So. 749, 1900 Miss. LEXIS 57 (Miss. 1900).

14. Construction of particular terms.

The wording of a deed which provided that "we hereby bargain, sell, convey and warrant to the Trustees of Oakgrove Consolidated High School and their successors the following described land. . ." could only connote a conveyance absolute and the grantors' children would not be heard some 50 years later to say that the grantors' intent was something entirely different from what was expressed in the plain and simple legalese in the recorded instrument of conveyance. Garraway v. Yonce, 549 So. 2d 1341, 1989 Miss. LEXIS 453 (Miss. 1989).

While the trend of the law in the construction of deeds has been extremely strict, and the words of the deed have been paramount in determining the type of conveyance executed rather than the true intent of the grantor, the new trend and interpretation of this rule of law is toward ascertaining the true intent of the grantor when dealing with conveyances by deed, as has been done in construing conveyances by will in this state for almost a hundred years. Avant v. Wells, 244 So. 2d 398, 1971 Miss. LEXIS 1329 (Miss. 1971).

A deed which recited that the grantor did "hereby warrant, sell and convey" certain land to his wife for a named consideration, but further provided that after the death of the wife, by fee simple, the property be equally divided between two named persons, sufficiently showed that it was the intention of the grantor to convey to his wife a life estate only, and upon her death a remainder to be divided equally between the two named persons. Avant v. Wells, 244 So. 2d 398, 1971 Miss. LEXIS 1329 (Miss. 1971).

Where the recitals of a deed announce a purpose to invest a life estate in the grantee, with remainder to his children, but the granting party conveys the land in fee simple to the grantee and his heirs, the grant controls. Dunbar v. Aldrich, 79 Miss. 698, 31 So. 341, 1901 Miss. LEXIS 114 (Miss. 1901).

15. Miscellaneous.

In order to have merger of title, it is necessary that first and second deeds of trust be owned entirely by the same party. Merchants Nat'l Bank v. Stewart, 608 So. 2d 1120, 1992 Miss. LEXIS 137 (Miss. 1992).

Separate deeds may be used to sever estate in the entirety under narrow range of circumstances whereby both spouses act in concert pursuant to common purpose and without derogation of other's right of survivorship. Thus, separate deeds could be used by husband and wife to sever estate in the entirety where both deeds were executed, acknowledged and recorded at same time and place, and ownership arrangement regarding the property was clearly division of marital property in anticipation of spouses' impending divorce. Newton v. Long, 588 So. 2d 192 (1991).

An otherwise valid warranty deed would not be set aside for failure of consideration; if there were any failure of consideration, the result would be addressed by awarding damages, rather than a cancellation of the deed. Vega v. Estate of Mullen, 583 So. 2d 1259, 1991 Miss. LEXIS 119 (Miss. 1991).

Where land is described in a deed by township, range and section, so that it may be located with absolute certainty, it is of no importance to the validity of the conveyance that the lands or a portion thereof are recited as lying in an incorrect county. Holliman v. Charles L. Cherry & Assoc., Inc., 569 So. 2d 1139, 1990 Miss. LEXIS 204 (Miss. 1990).

One who relies upon a conveyance by deed is not precluded from claiming adversely possessed land even though the land description in the deed does not include contiguous land adversely possessed by the predecessor in title. Stallings v. Bailey, 558 So. 2d 858, 1990 Miss. LEXIS 157 (Miss. 1990).

A deed which conveyed a "2 and one-half/32 and one-half ($^{2}.5/32_{.5}$)" mineral interest in one land parcel comprising 25 acres and another land parcel comprising 7.5 acres, "containing in the aggregate of 32.5 acres" conveyed a full and undivided 2.5 mineral acres out of the aggregate of 32.5 acres, rather than an undivided $^{2}.5/32_{.5}$ fractional interest from each acre in the 25-acre track and also from each acre in the 7.5-acre track. Pursue Energy Corp. v. Perkins, 558 So. 2d 349, 1990 Miss. LEXIS 63 (Miss. 1990).

If a party who contemplates purchasing a piece of property wishes to protect himself or herself against the possibility that he or she may be unable to secure financing adequate to make the purchase, it is incumbent upon that party to so provide by clear language in the contract. Otherwise, this is a risk the buyer assumes when he or she executes the contract. Osborne v. Bullins, 549 So. 2d 1337, 1989 Miss. LEXIS 448 (Miss. 1989).

Although, ordinarily, previous negotiations or contracts are merged into a deed of conveyance, certain preliminary stipulations, such as are independent and collateral, and not such preliminary agreements as would be merged in the conveyance, survive the deed and confer independent causes of action. Knight v. McCain, 531 So. 2d 590, 1988 Miss. LEXIS 435 (Miss. 1988).

Where a remainderman affirmatively misled a purchaser from the life tenant into believing that if he purchased the property he would get a good title, and the remainderman thereafter observed the day to day progress of the construction by the purchaser of a home upon the property without any mention of his remainder interest, the purchaser was entitled to a lien for the value of the improvements he had so constructed. Collier v. King, 251 Miss. 607, 170 So. 2d 632, 1965 Miss. LEXIS 888 (Miss. 1965).

Under this section, a residuary devise or bequest carries everything the testator has attempted but failed to dispose of, unless a contrary intention appears from the will. Oliphant v. Skelton, 230 Miss. 518, 93 So. 2d 181, 1957 Miss. LEXIS 392 (Miss. 1957).

One who purchases real property on faith of public records from wife does not occupy position of innocent purchaser for value as to interest of husband when deed conveying property to husband and wife has been altered before recording by deletion of husband's name from deed as one of the grantees. Prater v. Prater, 208 Miss. 59, 43 So. 2d 582, 1949 Miss. LEXIS 408 (Miss. 1949).

Purchaser of property under forgery is not exalted by law into preferred position of innocent purchaser for value and thief can give no title. Prater v. Prater, 208 Miss. 59, 43 So. 2d 582, 1949 Miss. LEXIS 408 (Miss. 1949).

Purchaser of real property who refuses to carry out contract to purchase on other grounds cannot, on appeal from judgment in favor of vendor, raise the objection to form of deed tendered that it required vendee to pay taxes, since grantor did not have opportunity to meet this objection, which he might have corrected had any request been made that he do so. Vanlandingham v. Jenkins, 207 Miss. 882, 43 So. 2d 578, 1949 Miss. LEXIS 399 (Miss. 1949).

Lessor not obligated to put lessee in possession without express provision therefor, as tenant has statutory power to evict an intruder. West v. Kitchell, 109 Miss. 328, 68 So. 469, 1915 Miss. LEXIS 159 (Miss. 1915).

A deed that describes land by section, township and range is not void for uncertainty because it does not describe the state and county in which the land is situated. Ladnier v. Ladnier, 75 Miss. 777, 23 So. 430, 1898 Miss. LEXIS 22 (Miss. 1898).

Unless specially authorized by the terms of the instrument, a trustee in a deed of trust is unauthorized to appoint another to act in his place. Carey v. Fulmer, 74 Miss. 729, 21 So. 752, 1897 Miss. LEXIS 54 (Miss. 1897).

OPINIONS OF THE ATTORNEY GENERAL

A tax lien is extinguished once the State acquires property, not necessarily when the deed was recorded. Miller, February 23, 1995, A.G. Op. #95-0039.

RESEARCH REFERENCES

ALR.

Conveyance or reservation of minerals as including minerals recoverable only by open pit mining. 1 A.L.R.2d 787.

Restrictive covenants, conditions, or agreements in respect of real property discriminating against persons on account of race, color, or religion. 3 A.L.R.2d 466.

Rights as between vendor and vendee under land contract in respect of interest. 25 A.L.R.2d 951.

Deeds: meaning of terms "dwelling" or "dwelling house" or "house" as used in the conveyance or exception or reservation clauses. 38 A.L.R.3d 1419.

Validity and construction or restrictive covenant requiring consent to construction on lot. 40 A.L.R.3d 864.

Pre-emptive rights to realty as violation of rule against perpetuities or rule concerning restraints on alienation. 40 A.L.R.3d 920.

Covenant in deed restricting material to be used in building construction. 41 A.L.R.3d 1290.

Applicability of statute of frauds to agreement to rescind contract for sale of land. 42 A.L.R.3d 242.

Specific performance of land contract notwithstanding failure of vendee to make required payments on time. 55 A.L.R.3d 10.

Construction and operation of "optional agreement-flat payment" land contract under which optionee has right to take title when periodic payments (otherwise to be treated as rent) equal agreed price. 55 A.L.R.3d 159.

Independent option to purchase real estate as violating rule against perpetuities or restraints on alienation. 66 A.L.R.3d 1294.

Specificity of description of premises as affecting enforceability of contract to convey real property-modern cases. 73 A.L.R.4th 135.

Effect of Federal Home Mortgage Disclosure Act of 1975 (12 USCS §§ 2801-2809) on enforcement of state disclosure and antiredlining statutes against federal financial institutions. 57 A.L.R. Fed. 322.

Am. Jur.

14 Am. Jur. 2d, Champerty and Maintenance §§ 11 et seq.

5A Am. Jur. Pl & Pr Forms (Rev), Champerty and Maintenance, Forms 31, 32 (answer alleging that conveyance was champertous).

8 Am. Jur. Pl & Pr Forms (Rev) Deeds, Forms 14-18 (jury instructions as to what constitutes delivery of deed).

7 Am. Jur. Legal Forms 2d, Deeds §§ 87:231 et seq. (reservations and exceptions).

13 Am. Jur. Proof of Facts 2d 483, Delivery of Deeds.

17 Am. Jur. Proof of Facts 2d 283, Voluntary Grantor's Mistake in Conveying more than was Intended.

38 Am. Jur. Proof of Facts 2d 633, Dedication of Land to Public Use.

CJS.

14 C.J.S., Champerty and Maintenance Barratry and Related Matters § 16.

14 C.J.S., Champerty and Maintenance; Barratry and Related Matters § 16.

26A C.J.S., Deeds §§ 164 et seq.

§ 89-1-3. Land to be conveyed only by writing.

An estate of inheritance or freehold, or for a term of more than one (1) year, in lands shall not be conveyed from one to another unless the conveyance be declared by writing signed and delivered.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (1); 1857, ch. 36, art. 19; 1871, § 2302; 1880, § 1188; 1892, § 2434; 1906, § 2763; Hemingway's 1917, § 2267; 1930, § 2111; 1942, § 832.

Cross References — Definition of term "written," see § 1-3-61.
Operation of decree of chancery court as conveyance, see § 11-5-85.
Land office certificates vesting title in land, see § 13-1-131.
Statutes of frauds, see §§ 15-3-1 et seq., 89-1-47.
Conveyances by attorney in fact, see § 87-3-3.

Requirement that spouse join in conveying homestead, see § 89-1-29.
Requirements for valid conveyance between husband and wife, see § 93-3-9.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Instrument executed by agent acting under parol authority.
3. Delivery.
4. Miscellaneous.

1. In general.

A severance from a joint tenancy to a tenancy in common is not a conveyance when it arises from the course of dealing, but is simply a change from one form of ownership to that of another form and arises by the operation of law. Bird v. Stein, 102 F. Supp. 399, 1952 U.S. Dist. LEXIS 4742 (D. Miss. 1952), rev'd, 204 F.2d 122, 1953 U.S. App. LEXIS 3982 (5th Cir. Miss. 1953).

No estate in land passed under this section by verbal gift. Smith v. Taylor, 183 Miss. 542, 184 So. 423, 1938 Miss. LEXIS 267 (Miss. 1938).

To establish title by estoppel, evidence must show all necessary elements of estoppel. Roberts v. Bookout, 162 Miss. 676, 139 So. 175, 1932 Miss. LEXIS 122 (Miss. 1932).

Mortgagee for value without notice is not chargeable with unrecorded assignment of lease. Corinth Bank & Trust Co. v. Wallace, 111 Miss. 62, 71 So. 266, 1916 Miss. LEXIS 241 (Miss. 1916).

License to go on land and take turpentine from trees, is not an interest in land requiring writing. Newton v. Long, 107 Miss. 349, 65 So. 460, 1914 Miss. LEXIS 91 (Miss. 1914).

At common law "land," embraced both soil and natural products such as trees growing upon and affixed to it. L. N. Dantzler Lumber Co. v. State, 97 Miss. 355, 53 So. 1, 1910 Miss. LEXIS 286 (Miss. 1910), limited, Merrill Engineering Co. v. Capital Nat'l Bank, 192 Miss. 378, 5 So. 2d 666, 1942 Miss. LEXIS 5 (Miss. 1942).

When reasonably possible, conveyances should be so construed as to render them operative. Swan v. New England Mortg. & Sec. Co., 75 Miss. 907, 23 So. 627, 1898 Miss. LEXIS 40 (Miss. 1898).

This section forbids a verbal agreement between two adjoining proprietors that a division wall, built in part upon the land of each, shall be the sole property of one of them. Weems v. Mayfield, 75 Miss. 286, 22 So. 892, 1897 Miss. LEXIS 124 (Miss. 1897).

A parol agreement authorizing the cutting of standing trees is within this section. Walton v. Lowrey, 74 Miss. 484, 21 So. 243, 1896 Miss. LEXIS 165 (Miss. 1896).

A license to use land is good only to those in whose favor or for whose use it is given. Agnew v. Jones, 74 Miss. 347, 23 So. 25, 1896 Miss. LEXIS 186 (Miss. 1896).

A verbal lease of land to begin at a future fixed time, and to continue not more than one year, is valid. McCroy v. Toney, 66 Miss. 233, 5 So. 392, 1888 Miss. LEXIS 95 (Miss. 1888).

Real estate cannot be passed or incumbered for a longer period than one year by a mere deposit of the title deeds. Gothard v. Flynn, 25 Miss. 58, 1852 Miss. LEXIS 142 (Miss. 1852).

2. Instrument executed by agent acting under parol authority.

Agent under parol authority may execute written contract binding principal to exchange of lands. Hopper v. McAllum, 87 Miss. 441, 40 So. 2, 1905 Miss. LEXIS 159 (Miss. 1905).

Inasmuch as a lease of land for more than one year must be by deed the appointment of an agent to make it must be by deed. Lobdell v. Mason, 71 Miss. 937, 15 So. 44, 1894 Miss. LEXIS 16 (Miss. 1894).

An instrument executed by an agent who is only verbally authorized purporting to rent land for more than one year is invalid as a lease for the time over one year, but in equity it is good as a contract binding the principal to execute a lease. Lobdell v. Mason, 71 Miss. 937, 15 So. 44, 1894 Miss. LEXIS 16 (Miss. 1894).

3. Delivery.

Where a widow assigned and acknowledged a warranty deed conveying her farm to her niece, reserving a life estate to herself, which deed was handed to her brother with the instructions to keep and deliver it to her niece upon the widow's death, which instructions were followed, there was a valid delivery from the widow to the niece in view of the undisputed testimony that the grantor reserved no right to recall the deed, and that the delivery to the brother was unequivocally to hold for the niece. Myers v. Laird, 230 Miss. 675, 93 So. 2d 828, 1957 Miss. LEXIS 409 (Miss. 1957).

Delivery may be constructive as well as actual, it being sufficient if the words or acts of the grantor manifest his intention to treat the deed as having been delivered. Frederic v. Merchants & Marine Bank, 200 Miss. 755, 28 So. 2d 843, 1947 Miss. LEXIS 359 (Miss. 1947).

Where owner put purchaser in possession of house under oral agreement to sell, and executed but did not deliver deed, there was no change of interest or title. Osler v. Atlas Assurance Co., 127 Miss. 511, 90 So. 185, 1921 Miss. LEXIS 253 (Miss. 1921).

Deposit of deed to be delivered by depository to grantee after grantor's death, if without reservation, is sufficient delivery to vest title. Wilson v. Bridgforth, 108 Miss. 199, 66 So. 524, 1914 Miss. LEXIS 189 (Miss. 1914).

Act of grantor placing deed in tin box among his private papers in wardrobe used by him and wife, did not constitute delivery to wife. Ligon v. Barton, 88 Miss. 135, 40 So. 555, 1906 Miss. LEXIS 122 (Miss. 1906).

If a deed be once effectually delivered, no subsequent acts of the grantor can disparage the title conveyed. Hall v. Waddill, 78 Miss. 16, 27 So. 936, 1900 Miss. LEXIS 71 (Miss. 1900).

To effect a valid delivery of a deed the grantor must part with it so absolutely and irrevocably as never thereafter to have the right to recall it. Hall v. Waddill, 78 Miss. 16, 27 So. 936, 1900 Miss. LEXIS 71 (Miss. 1900).

4. Miscellaneous.

The statutory signing requirements of §§ 15-3-1, 89-1-3, 89-1-29 and 91-9-1 [repealed] were satisfied with respect to a deed of trust relating to homestead property, even though the wife neglected to sign the deed of trust document, where her signature appeared on the 2 attachments to the deed of trust-the property description and the adjustable rate mortgage rider-which constituted an integral part of the deed of trust. United Miss. Bank v. GMAC Mortgage Co., 615 So. 2d 1174, 1993 Miss. LEXIS 21 (Miss. 1993).

The wording of a deed which provided that "we hereby bargain, sell, convey and warrant to the Trustees of Oakgrove Consolidated High School and their successors the following described land. . . " could only connote a conveyance absolute and the grantors' children would not be heard some 50 years later to say that the grantors' intent was something entirely different from what was expressed in the plain and simple legalese in the recorded instrument of conveyance. Garraway v. Yonce, 549 So. 2d 1341, 1989 Miss. LEXIS 453 (Miss. 1989).

A conveyance of land executed to a corporation in violation of the Mississippi Blue Sky Law (Laws, 1916, ch. 97) was utterly void and imparted no notice to subsequent purchasers, nor did it set in motion the running of the 10-year statute of limitations. Mississippi State Highway Com. v. Smith, 197 So. 2d 212, 1967 Miss. LEXIS 1503 (Miss. 1967).

Alteration of deed by deletion of name of one of two grantees named in deed when it was delivered does not operate to pass title to grantee whose name remains in deed as title to one-half interest in property which has vested in grantee whose name was deleted can pass only by instrument of writing. Prater v. Prater, 208 Miss. 59, 43 So. 2d 582, 1949 Miss. LEXIS 408 (Miss. 1949).

One who purchases real property on faith of public records from wife does not occupy position of innocent purchaser for value as to interest of husband when deed conveying property to husband and wife has been altered before recording by deletion of husband's name from deed as one of the grantees. Prater v. Prater, 208 Miss. 59, 43 So. 2d 582, 1949 Miss. LEXIS 408 (Miss. 1949).

Deed to property executed by wife conveys only interest in property owned by her, which is an undivided one-half interest when wife owns interest by reason of deed naming husband and wife as grantees, and deletion of husband's name from deed after its delivery to grantees does not increase interest of wife in property. Prater v. Prater, 208 Miss. 59, 43 So. 2d 582, 1949 Miss. LEXIS 408 (Miss. 1949).

Instrument purporting to be a deed, which has no grantee, either corporation or person, in being is void; deed for school and church purposes to Collins Graveyard and Collins School House was ineffectual, where no corporations so named were known in the community. Morgan v. Collins School House, 160 Miss. 321, 133 So. 675, 1931 Miss. LEXIS 172 (Miss. 1931).

Deed for support of grantor not cancelled for breach of agreement where it provides no lien nor forfeiture on condition broken; such deed not set aside on grounds grantor did not understand terms in absence of timely application. Wynn v. Kendall, 122 Miss. 809, 85 So. 85, 1920 Miss. LEXIS 477 (Miss. 1920).

A deed conveying lands in a legal subdivision described as a corner or fractional corner of the same containing a certain area is not void for uncertainty. Swan v. New England Mortg. & Sec. Co., 75 Miss. 907, 23 So. 627, 1898 Miss. LEXIS 40 (Miss. 1898).

A deed conveying "lot 36 in the town of Webb" is not void for uncertainty, since the courts will take judicial notice of the municipal subdivisions of the state and that they are in the counties to which they belong. Wilkerson v. Webb, 75 Miss. 403, 23 So. 180 (Miss. 1897).

A verbal agreement by the owner to convey land to a county for school purposes, by which third parties are induced to erect a schoolhouse thereon, is an irrevocable license for the purpose for which it was made as long as the house is used for the purpose specified. Agnew v. Jones, 74 Miss. 347, 23 So. 25, 1896 Miss. LEXIS 186 (Miss. 1896).

The section does not prevent the vesting of the title to lands by virtue of an adverse possession for the statutory period, though the holding were begun under a parol gift or purchase. Davis v. Davis, 68 Miss. 478, 10 So. 70, 1891 Miss. LEXIS 52 (Miss. 1891).

RESEARCH REFERENCES

ALR.

Rights as between vendor and vendee under land contract in respect of interest. 25 A.L.R.2d 951.

Applicability of statute of frauds to agreement to rescind contract for sale of land. 42 A.L.R.3d 242.

Statute of frauds: validity of lease or sublease subscribed by one of the parties only. 46 A.L.R.3d 619.

Specificity of description of premises as affecting enforceablilty of contract to convey real property-modern cases. 73 A.L.R.4th 135.

Specificity of description of premises as affecting enforceability of lease. 73 A.L.R.4th 236.

Am. Jur.

23 Am. Jur. 2d, Deeds §§ 105 et seq.

49 Am. Jur. 2d, Landlord and Tenant §§ 60-64.

38 Am. Jur. Proof of Facts 2d 633, Dedication of Land to Public Use.

CJS.

26A C.J.S., Deeds § 39.

51 C.J.S., Landlord and Tenant §§ 21 et seq.

§ 89-1-5. Words of inheritance not necessary.

Every estate in lands granted, conveyed, or devised, although the words deemed necessary by the common law to transfer an estate of inheritance be not added, shall be deemed a fee-simple if a less estate be not limited by express words, or unless it clearly appear from the conveyance or will that a less estate was intended to be passed thereby.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (23); 1857, ch. 36, art. 2; 1871, § 2285; 1880, § 1189; 1892, § 2435; 1906, § 2764; Hemingway's 1917, § 2268; 1930, § 2112; 1942, § 833.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Deeds to railroads.

1. In general.

Decedent devised the decedent's home and its furnishings to the decedent's surviving spouse in fee simple and not as a life estate with the remainder to the decedent's nephew because reading the subject provision in the context of the entire will showed that the decedent intended that the spouse inherit the property covered by the provision in fee simple. The plainly stated fee-simple estate devised to the spouse was not diminished by the subsequent confusing alternative devise of a life estate to the spouse with remainder to the nephew. Kendrick v. Warren, 309 So. 3d 122, 2020 Miss. App. LEXIS 673 (Miss. Ct. App. 2020).

Section 89-1-5, which provides, in part, that "the words deemed necessary by the common law to transfer an estate of inheritance" are no longer necessary to create a fee simple, does not alter the principle that reservations or exceptions expressed in doubtful or ambiguous language are, as a general rule, construed most strongly against the grantor and in favor of the grantee. Deason v. Cox, 527 So. 2d 624, 1988 Miss. LEXIS 209 (Miss. 1988).

Under a land sale contract providing for reconveyance to the vendor in the event that industrial facilities were not developed on the property within five years, a condition which was not satisfied, the purchaser was required to convey fee simple title (including timber rights) where, although timber rights had been reserved to the vendor in the original deed and were later conveyed to the purchaser for separate consideration, the rights under the timber deed expired while the property was possessed by the purchaser and thus, merged into the ownership under the original deed. Forbes v. Columbia Pulp & Paper Co., 340 So. 2d 734, 1976 Miss. LEXIS 1732 (Miss. 1976).

Language in a will that all of the testator's property was to pass to his wife and daughter and their descendents created a fee simple in the wife and daughter and not a life estate. Bradford v. Federal Land Bank, 338 So. 2d 388, 1976 Miss. LEXIS 1620 (Miss. 1976).

A devise of all testator's property, except a certain parcel, to his wife, was construed to give her the fee notwithstanding an expressed desire that testator's daughter should receive all property that her mother should have at her death. Wheeler v. Williams, 235 Miss. 142, 108 So. 2d 578, 1959 Miss. LEXIS 412 (Miss. 1959).

Under this section decedent's transfer of land to herself as trustee for the benefit of her four children and the heirs at law of any of such children who should die during the continuance of the trust, with provision for distribution of the trust to the beneficiaries upon death of the trustee or her termination of the trust, vested the property in the trustee and the beneficiaries, so that the trust property was not part of decedent's gross estate so as to be subject to federal estate taxes. Hays' Estate v. Commissioner, 181 F.2d 169, 1950 U.S. App. LEXIS 4012 (5th Cir. 1950).

Devise of land without words of inheritance vests fee-simple title. Strickland v. Delta Inv. Co., 163 Miss. 772, 137 So. 734, 1931 Miss. LEXIS 6 (Miss. 1931).

Devise to two daughters providing that in case of daughters' predeceasing testatrix, their children were to inherit each mother's share, or if one died without children whole estate was to go to other, or if both died without children estate was to go over, was a contingency providing against death of daughters before testatrix, and upon their survival of testatrix they took a fee simple. Nations v. Colonial & United States Mortg. Co., 115 Miss. 741, 76 So. 642, 1917 Miss. LEXIS 260 (Miss. 1917).

2. Deeds to railroads.

While Miss. Code Ann. § 89-1-5 contained a presumption that a fee simple title passes unless expressly limited, there also existed a presumption of an easement when a deed failed to specifically identify a tract of land to be used for a railway, and where the railroad's deed gave it a right to enter upon and hold the property, but did not convey the land itself, and the language that the conveyance was against the grantors and their heirs and assigns forever was not in the granting clause, the railroad only had a right of way, and thus, the interest that plaintiff potential purchasers of an industrial plant acquired from the railroad, through a quit claim deed for the property that adjoined the industrial plant, was only a right of way, and the potential purchasers' claim of trespass against defendants, the industrial plant seller and the ultimate buyer, failed on defendants' motion for summary judgment. Fibre Corp. v. GSO Am., Inc., 2005 U.S. Dist. LEXIS 37906 (S.D. Miss. Dec. 8, 2005).

RESEARCH REFERENCES

Am. Jur.
23 Am. Jur. 2d, Deeds § 23.

CJS.
26A C.J.S., Deeds § 42.

§ 89-1-7. Estate in two or more persons.

All conveyances or devises of land made to two (2) or more persons, including conveyances or devises to husband and wife, shall be construed to create estates in common and not in joint tenancy or entirety, unless it manifestly appears from the tenor of the instrument that it was intended to create an estate in joint tenancy or entirety with the right of survivorship. But an estate in joint tenancy or entirety with right of survivorship may be created by such conveyance from the owner or owners to himself, themselves or others, or to himself, themselves and others.

An estate in joint tenancy or entirety with right of survivorship between spouses may be terminated by deed of one spouse to the other without necessity of joinder of the grantee spouse and without regard to whether the property constitutes any part of the homestead of the spouses.

HISTORY: Codes, 1857, ch. 36, art. 18; 1871, § 2301; 1880, § 1197; 1892, § 2441; 1906, § 2770; Hemingway's 1917, § 2274; 1930, § 2113; 1942, § 834; Laws, 1958, ch. 237; Laws, 1993, ch. 395, § 1, eff from and after July 1, 1993.

Cross References — Partition of property, see §§ 11-21-1 et seq.
Larceny by cotenant, see § 97-17-63.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Tenancy in common.
3. Joint tenancy.
4. Tenancy by entirety.
5. Conveyances to trustees.
6. Miscellaneous.

1. In general.

This section does not apply to mortgages or choses in action. Vaughn v. Vaughn, 238 Miss. 342, 118 So. 2d 620, 1960 Miss. LEXIS 411 (Miss. 1960).

The law does not favor joint estates with the right of survivorship. Cross v. O'Cavanagh, 198 Miss. 137, 21 So. 2d 473, 1945 Miss. LEXIS 176 (Miss. 1945).

The statute does not apply to conveyances made before its passage. Gresham v. King, 65 Miss. 387, 4 So. 120, 1888 Miss. LEXIS 4 (Miss. 1888).

2. Tenancy in common.

A reservation or conveyance of a fractional interest in minerals creates a tenancy-in-common between the parties as to the minerals. Thornhill v. System Fuels, Inc., 523 So. 2d 983, 1988 Miss. LEXIS 172 (Miss. 1988).

The rule which prevents one tenant in common from purchasing an outstanding title to the common property and setting it up against his cotenant is founded upon a confidential relation which is presumed to exist between them, and has no application where the circumstances surrounding them negative any such relation, and show that they, though in law tenants in common, are not such in fact, and are asserting hostile claims against each other with reference to the common property. Bayless v. Alexander, 245 So. 2d 17, 1971 Miss. LEXIS 1349 (Miss. 1971).

Where a will provided that two legatees were to take the dividends from certain bank stock for life with the power to sell stock upon agreement among themselves, the remainder to go to two named remaindermen, the relationship created was that of tenancy in common between the legatees, so that upon the death of one legatee his interest would pass to the remaindermen. Birmingham v. Conger, 222 So. 2d 388, 1969 Miss. LEXIS 1530 (Miss. 1969).

A conveyance to two or more individuals is presumed to create a tenancy in common in the named individuals, absent evidence rebutting such a presumption. Chevron Oil Co. v. Clark, 291 F. Supp. 552, 1968 U.S. Dist. LEXIS 12565 (S.D. Miss. 1968).

Where a trustee, who was the owner of a one-half interest in land, and a woman, who was the record owner of a one-half interest of the surface and three-tenths of the minerals in the land, were tenants in common, upon the conveyance by the trustee to a third person of his one-half interest, the third person became a tenant in common with the woman. Anderson v. Boyd, 229 Miss. 596, 91 So. 2d 537, 1956 Miss. LEXIS 642 (Miss. 1956).

Under will devising brother one-sixth, two sisters each one-third, and former wife one-sixth of remainder, their interest was estate in common, and admissions against interest by less than all of them were not admissible in will contest. Nebhan v. Mansour, 162 Miss. 418, 139 So. 166, 139 So. 878, 1932 Miss. LEXIS 120 (Miss. 1932).

Residuary legacy of real estate to two nephews for their lives made nephews tenants in common. Henry v. Henderson, 103 Miss. 48, 60 So. 33, 1912 Miss. LEXIS 138 (Miss. 1912).

Conveyance to "Pink Boutwell and wife" created tenancy in common, and husband and wife each owned an undivided one-half interest. Conn v. Boutwell, 101 Miss. 353, 58 So. 105, 1911 Miss. LEXIS 155 (Miss. 1911).

Upon renunciation of will by widow, executors who were residuary legatees became tenants in common with widow and were entitled to partition of the estate. Laughlin v. O'Reily, 92 Miss. 121, 45 So. 193, 1907 Miss. LEXIS 11 (Miss. 1907).

Unity of possession only necessary to constitute tenancy in common, regardless of commencement, quantum of interest, or source of title. Laughlin v. O'Reily, 92 Miss. 121, 45 So. 193, 1907 Miss. LEXIS 11 (Miss. 1907).

A child in esse at the date of a conveyance to his mother and children, takes as tenant in common with the mother, under this section. Brabham v. Day, 75 Miss. 923, 23 So. 578, 1898 Miss. LEXIS 36 (Miss. 1898).

Conveyance to three nieces for their lives, and at their death to the descendants of their bodies in fee, if any there be, and if they have none to survive them, then to the heirs of their brothers and sisters in fee, created a tenancy in common for the life of the last survivor of the nieces, the heirs of predeceasing tenants in common holding in common with the surviving tenants. Hawkins v. Hawkins, 72 Miss. 749, 18 So. 479, 1895 Miss. LEXIS 63 (Miss. 1895).

A devise to two persons, without other words, makes them tenants in common. Nichols v. Denny, 37 Miss. 59, 1859 Miss. LEXIS 3 (Miss. 1859).

3. Joint tenancy.

Award of the entire purchase price of a home to one of the unmarried joint tenants (JT1) was appropriate. Joint tenants were allowed to seek partition of a property under Miss. Code Ann. § 11-21-3 partition, the chancellor could adjust the equities and determine the claims of the joint tenants under Miss. Code Ann. § 11-21-9, and JT1 had paid the entire purchase price for the home along with the cost of all utilities, insurance, club dues, and taxes while JT2 had paid nothing. Jones v. Graphia, 95 So. 3d 751, 2012 Miss. App. LEXIS 493 (Miss. Ct. App. 2012).

A deed conveying property to a husband and wife specifically created a joint tenancy, where it was conveyed to them "as joint tenants, not as tenants in common, but with the rights of survivorship in each upon death of either." Ayers v. Petro, 417 So. 2d 912, 1982 Miss. LEXIS 2087 (Miss. 1982).

Although joint tenancies are not favored in Mississippi, they may be created by the use of specific language in the deed or other instrument. O'Connor v. Dickerson, 188 So. 2d 241, 1966 Miss. LEXIS 1374 (Miss. 1966).

Deeds to husband and wife "and the survivor of them" manifested an intention to create an estate in joint tenancy and not an estate in common, entitling the wife to take as survivor as against the heirs at law of her deceased husband. Wolfe v. Wolfe, 207 Miss. 480, 42 So. 2d 438, 1949 Miss. LEXIS 356 (Miss. 1949).

Deed of an undivided four-fifths interest in certain land to two persons "jointly" did not create joint tenancy with right of survivorship. Doran v. Beale, 106 Miss. 305, 63 So. 647, 1913 Miss. LEXIS 135 (Miss. 1913).

4. Tenancy by entirety.

Because the debtors owned their homestead as tenants by the entirety, any nonexempt equity in the debtors' homestead could be administered only to the extent of the joint claims against the debtors. In re Pace, 521 B.R. 124, 2014 Bankr. LEXIS 4341 (Bankr. N.D. Miss. 2014).

Plaintiffs contended and defendant agreed that because defendant failed to have both plaintiffs, as tenants by the entirety, execute the construction contract, the lien did not attach to the property as a means of securing the debt owed only by one plaintiff to defendant, but the other plaintiff's alleged knowledge and consent to work being done on property she owned might amount to authorization, regardless of whether or not she was a signatory to the contract, and summary judgment was inappropriate at this stage. Ward v. McCammon (In re Ward), 2014 Bankr. LEXIS 1200 (Bankr. N.D. Miss. Mar. 28, 2014).

Property was held by plaintiffs as tenants by the entirety, and by virtue of each spouse possessing an undivided interest in the entire estate, the property was not subject to unilateral action of less than all the owners. Ward v. McCammon (In re Ward), 2014 Bankr. LEXIS 1200 (Bankr. N.D. Miss. Mar. 28, 2014).

Chapter 13 debtor who owned real property with her husband as a tenant by the entireties, which she claimed as her homestead, was allowed under 11 U.S.C.S. § 522(b)(3)(B) to exempt the full value of the property from unsecured creditors' claims for debts she incurred separately, when her husband did not join her in filing bankruptcy. Mississippi was a common law state, the common law of Mississippi constituted "applicable nonbankruptcy law" under § 522(b)(3)(B), and her homestead was exempt under Mississippi law from any process which could arise from the claims at issue. In re Dixon, 2011 Bankr. LEXIS 5680 (Bankr. S.D. Miss. Mar. 31, 2011).

Separate deeds may be used to sever estate in the entirety under narrow range of circumstances whereby both spouses act in concert pursuant to common purpose and without derogation of other's right of survivorship. Thus, separate deeds could be used by husband and wife to sever estate in the entirety where both deeds were executed, acknowledged and recorded at same time and place, and ownership arrangement regarding property was clearly division of marital property in anticipation of spouses' impending divorce. Newton v. Long, 588 So. 2d 192 (1991).

A tenancy by the entirety with right of survivorship was not converted to a tenancy in common by divorce of the parties; since a tenancy by the entirety is a joint tenancy with a right of survivorship plus the marital relation, even if the divorce terminated the tenancy by the entirety, the parties remained joint tenants with the right of survivorship and, upon the wife's death, the property became the husband's property. Shepherd v. Shepherd, 336 So. 2d 497, 1976 Miss. LEXIS 1510 (Miss. 1976).

A tenancy by the entireties in real property cannot be severed or destroyed by the act of one of the tenants. Cuevas v. Cuevas, 191 So. 2d 843, 1966 Miss. LEXIS 1227 (Miss. 1966).

5. Conveyances to trustees.

This section does not preclude the creation of a joint estate in trustees, which on the death of one will vest title in the survivors. King v. O'Tuckolofa Gun & Rod Club, 178 Miss. 606, 174 So. 83, 1937 Miss. LEXIS 252 (Miss. 1937).

The right of survivorship exists where the estate is conveyed to trustees jointly. McAllister v. Plant, 54 Miss. 106, 1876 Miss. LEXIS 16 (Miss. 1876).

6. Miscellaneous.

A deed in which a widower deeded land to himself and to the niece of his deceased wife as an "estate in the entirety with full rights of survivorship and not as tenants in common" was, under other Mississippi decisions and under the law generally, sufficient to vest the entire title to the property in the niece after the widower's death. Welborn v. Henry, 252 So. 2d 779, 1971 Miss. LEXIS 1198 (Miss. 1971).

Where a cotenant's widow in possession claimed property to the exclusion of the other cotenants for more than 10 years after the death of her husband, who had claimed the entirety of the property, and during such period the widow had received all benefits flowing from the land and had made all expenditures without accounting to anyone, there was the equivalent of an ouster of the other cotenants and she had clear full title by adverse possession, the fiduciary relationship usually presumed to exist between cotenants having no application here; since the circumstances surrounding the widow's acquisition of title completely negated any such relation to the extent that it was the equivalent of an ouster of the other cotenants. Bayless v. Alexander, 245 So. 2d 17, 1971 Miss. LEXIS 1349 (Miss. 1971).

In an action brought by cotenants to confirm and establish their title to an undivided interest as cotenants in certain land as against claims of another cotenant, who had purchased a tax title to the property, the purchasing cotenant could not claim adverse possession as against her cotenants where there was no ouster of the cotenants such as would give them notice that her claim was adverse to their interest. Gavin v. Hosey, 230 So. 2d 570, 1970 Miss. LEXIS 1556 (Miss. 1970).

The purchase of an outstanding tax title to the common property by one cotenant inures to the benefit of all cotenants, the reason being the confidential relationship or position of trust presumed to exist between cotenants. Gavin v. Hosey, 230 So. 2d 570, 1970 Miss. LEXIS 1556 (Miss. 1970).

Where a grant or devise is made to one and his children, or issue, or the children of issue of his body, or equivalent words, and the named person has no child at the effective date of the instrument, the named person takes a fee simple title to the property conveyed or devised, unless the instrument, by express words or necessary implication, shows a clear intent to create a life estate in the named person, remainder to afterborn children or issue. Ewing v. Ewing, 198 Miss. 304, 22 So. 2d 225, 1945 Miss. LEXIS 198 (Miss. 1945).

A conveyance of realty, effective immediately, to the grantors' daughter, "and the children of her body," reserving a life estate to one of the grantors, does not, where there are no children in being on the effective date of the grant, give the daughter's children an interest as tenants in common or joint tenants with their mother. Ewing v. Ewing, 198 Miss. 304, 22 So. 2d 225, 1945 Miss. LEXIS 198 (Miss. 1945).

Under will bequeathing estate to three living sisters and the heirs of deceased sister, and providing that at the death of the living sisters what was left of the estate was to go to the heirs of the deceased sister, the heirs are entitled to possession of each sister's share upon her death, rather than upon the death of the last survivor of them. Cross v. O'Cavanagh, 198 Miss. 137, 21 So. 2d 473, 1945 Miss. LEXIS 176 (Miss. 1945).

RESEARCH REFERENCES

ALR.

Creation of right of survivorship by instrument ineffective to create estate by entireties or joint tenancy. 1 A.L.R.2d 247.

Use of debtor's individual funds or property for acquisition, improvement of, or discharge of liens on, property held in estate by entireties as a fraud upon creditors. 7 A.L.R.2d 1104.

Capacity of cotenant to maintain suit to set aside conveyance of interest of another cotenant because of fraud, undue influence, or incompetency. 7 A.L.R.2d 1317.

Validity and effect of conveyance by one spouse to other of grantor's interest in property held as estate by entireties. 8 A.L.R.2d 634.

Rights and remedies as between cotenants of cemetery lots respecting burials therein. 10 A.L.R.2d 219.

Retrospective operation of legislation affecting estates by the entireties. 27 A.L.R.2d 868.

Character of tenancy created by owner's conveyance to himself and another, or to another alone, of an undivided interest. 44 A.L.R.2d 595.

Estate by entireties as affected by statute declaring nature of tenancy under grant or devise to two or more persons. 32 A.L.R.3d 570.

Felonious killing of one cotenant or tenant by the entireties by the other as affecting latter's rights in the property. 42 A.L.R.3d 1116.

Validity and effect of provision in deed attempting to make reservation or exception in favor of grantor's spouse. 52 A.L.R.3d 753.

Estate created by deed to persons described as husband and wife but not legally married. 9 A.L.R.4th 1189.

Am. Jur.

20 Am. Jur. 2d, Cotenancy and Joint Ownership §§ 11-15, 28-31.

7 Am. Jur. Legal Forms 2d, Cotenancy and Joint Ownership §§ 75:51 et seq. (tenancy in common).

12 Am. Jur. Legal Forms 2d, Life Tenants and Remaindermen §§ 166:9 et seq. (creation of life estates and future interests).

20 Am. Jur. Proof of Facts 2d 321, Status of Property as Separate.

Young, Trial Handbook for Mississippi Lawyers § 19:15.

CJS.

86 C.J.S., Tenancy in Common §§ 7 et seq.

§ 89-1-9. The rule in Shelley's Case abolished.

A conveyance or devise of land or other property to any person for life, with remainder to his heirs or heirs of his body, shall be held to create an estate for life in such person, with remainder to his heirs or heirs of his body, who shall take as purchasers, by virtue of the remainder so limited to them.

HISTORY: Codes, 1880, § 1201; 1892, § 2446; 1906, § 2776; Hemingway's 1917, § 2280; 1930, 2114; 1942, § 835.

Cross References — Descent of land generally, see § 91-1-3.

JUDICIAL DECISIONS

1. In general.

Where a will devised one-half of a parcel of land to the testator's son for life, and then to the heirs of the body of the son in fee simple, the testator intended to devise a life estate to the son, with remainder after his death to the heirs of his body in fee simple, should he have such heirs, and, upon the son dying without heirs, the devise lapsed and reverted to the heirs of the testator. Boxley v. Jackson, 191 Miss. 134, 2 So. 2d 160, 1941 Miss. LEXIS 125 (Miss. 1941).

The rule in Shelley's Case was abolished by this section. Boxley v. Jackson, 191 Miss. 134, 2 So. 2d 160, 1941 Miss. LEXIS 125 (Miss. 1941).

The grantor may impose restrictions on alienation of land during the period of life of up to two persons. Russell v. Federal Land Bank, 180 Miss. 55, 176 So. 737, 1937 Miss. LEXIS 99 (Miss. 1937).

Where deed conveyed land to grantee for life and provided that on grantee's death land should become property of grantee's legal heirs and prohibited grantee from selling, mortgaging, or otherwise incumbering land, the restrictions on the alienation were valid. Russell v. Federal Land Bank, 180 Miss. 55, 176 So. 737, 1937 Miss. LEXIS 99 (Miss. 1937).

Will devising land to testator's son for life and then to son's bodily heirs held effective to make life tenant's children remaindermen in fee, notwithstanding statute limiting suspension of alienation where subsequent provisions in will were dependent on contingencies which did not in fact occur. Federal Land Bank v. Newsom, 175 Miss. 114, 161 So. 864, 166 So. 345, 1935 Miss. LEXIS 27 (Miss. 1935).

Devise for life with remainder to heirs or heirs of body creates estate for life with remainder in fee. Stigler v. Shurlds, 131 Miss. 648, 95 So. 635, 1923 Miss. LEXIS 208 (Miss. 1923).

This section and Shelley's Case held not to apply to conveyance to woman and heirs of her body, such not being grant to her for life with remainder to heirs of her body. Liberty Bank v. Wilson, 116 Miss. 377, 77 So. 145, 1917 Miss. LEXIS 310 (Miss. 1917).

Whether provision in deed was a gift over of the land in case of death of grantor without heirs, held not to be determined until event happens and person taking thereunder is before court. Liberty Bank v. Wilson, 116 Miss. 377, 77 So. 145, 1917 Miss. LEXIS 310 (Miss. 1917).

Devise to two daughters providing that in case of daughters' deaths their children were to inherit their shares, or if one died without children whole estate was to go to other, or if both died without children estate was to go over, was a contingency providing against death of daughters before testatrix and upon their survival of testatrix they took a fee simple. Nations v. Colonial & United States Mortg. Co., 115 Miss. 741, 76 So. 642, 1917 Miss. LEXIS 260 (Miss. 1917).

RESEARCH REFERENCES

ALR.

Grant to one for life, and afterwards, either absolutely or contingently, to grantor's heirs or next of kin, as leaving reversion or creating remainder. 16 A.L.R.2d 691.

Nontrust life estate expressly given for support and maintenance, as limited thereto. 26 A.L.R.2d 1207.

Timber rights of life tenant. 51 A.L.R.2d 1374.

Modern status of the rule in Shelley's Case. 99 A.L.R.2d 1161.

Duty as between life tenant and remainderman with respect to cost of improvements or repairs made under compulsion of governmental authority. 43 A.L.R.4th 1012.

Am. Jur.

23 Am. Jur. 2d, Deeds § 186.

28 Am. Jur. 2d, Estates §§ 102 et seq.

CJS.

26A C.J.S., Deeds §§ 248 et seq.

§ 89-1-11. Remainder good without particular estate.

When an estate is, by any conveyance, limited in remainder to the son or daughter of any person, to be begotten such son or daughter born after the decease of the father, shall take the estate in the same manner as if he or she had been born in the lifetime of the father, although no estate shall have been conveyed to support the contingent remainder after his death.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (27); 1857, ch. 36, art. 9; 1871, § 2292; 1880, § 1202; 1892, § 2447; 1906, § 2777; Hemingway's 1917, § 2281; 1930, § 2115; 1942, § 836.

RESEARCH REFERENCES

Am. Jur.
28 Am. Jur. 2d, Estates § 211.

CJS.
31 C.J.S., Estates §§ 94 et seq.

§ 89-1-13. Limitation on failure of issue.

Every contingent limitation in any conveyance or will made to depend upon the dying of any person without heirs or heirs of the body, or without issue or issue of the body, or without children, or offspring, or descendant, or other relative, shall be held and interpreted as a limitation, to take effect when such person shall die not having such heir, or issue, or child, or offspring, or descendant, or other relative, as the case may be, living at the time of his death, or born to him within ten (10) months thereafter, unless the intention of such limitation be otherwise expressly and plainly declared on the face of the instrument creating it.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (26); 1857, ch. 36, art. 8; 1871, § 2291; 1880, § 1203; 1892, § 2448; 1906, § 2778; Hemingway's 1917, § 2282; 1930, § 2116; 1942, § 837.

Cross References — Wills generally, see §§ 91-5-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Construction and application.

1. In general.

The purpose of this section is to make the test whether the person in question left issue surviving him at the time of his death or had issue born to him within ten months thereafter, instead of whether or not he may have at any time subsequent to the execution of a will in his favor have had issue which predeceased such a beneficiary. Hays v. Cole, 221 Miss. 459, 73 So. 2d 258, 1954 Miss. LEXIS 551 (Miss. 1954).

This section applies to the situation at common law where there would be construed to exist an indefinite failure of issue and thus a void fee tail estate. White v. Inman, 212 Miss. 237, 54 So. 2d 375, 1951 Miss. LEXIS 447 (Miss. 1951).

The statute fixes the period at which the contingent limitation is to take effect. Sims v. Conger, 39 Miss. 231, 1860 Miss. LEXIS 46 (Miss. 1860).

The statute was designed to give to certain words a meaning different from that before attached to them by the courts.

Hampton v. Rather, 30 Miss. 193, 1855 Miss. LEXIS 86 (Miss. 1855); Jordan v. Roach, 32 Miss. 481, 1856 Miss. LEXIS 228 (Miss. 1856); Busby v. Rhodes, 58 Miss. 237, 1880 Miss. LEXIS 114 (Miss. 1880).

2. Construction and application.

Quitclaim deed executed to each other by four devisees of tract of land, each devisee having defeasible fee simple title, by which tract was divided into four parcels and each devisee took possession of his or her allotted parcel, served to separate use and income of divided parcels but could not confer upon respective grantees fee simple title to parcels as division was made subject to, and could not change, terms of will under which devisees took defeasible fee simple title. Crump v. Phelps, 207 Miss. 682, 43 So. 2d 105, 1949 Miss. LEXIS 379 (Miss. 1949).

Defeasible fee simple title is vested in named devisees under will providing trust for benefit of four named devisees and survivor or survivors of them and issue of deceased devisees subject to restriction that in event of death of devisee having no issue, devisee's share is to be equally divided between surviving devisees and issue of those who may have died, issue to take by representation interest of deceased parent, and this interpretation of will is supported by this section against contention that executory limitation over could not become effective unless death of one of children of testatrix occurred prior to her death. Crump v. Phelps, 207 Miss. 682, 43 So. 2d 105, 1949 Miss. LEXIS 379 (Miss. 1949).

Statute providing that contingent limitation in will depending on the dying of any person without issue, or issue of the body, or without children, shall be interpreted as limitation to take effect when such person shall die not having such heir, or issue, or child, has reference to death of devisee or legatee, and in absence of contrary intention expressly declared on face of will, requires that the limitation over be interpreted as taking effect on death of one of devisees without issue at any time. Hanie v. Grissom, 178 Miss. 108, 172 So. 500, 1937 Miss. LEXIS 189 (Miss. 1937).

Limitation over contained in provision in will that if any of children to whom testatrix left certain realty should die without children, his or her share in realty should go equally to testatrix' children that were living, was intended to take effect on death of child without issue at any time, whether before or after death of testatrix, and hence children took fee defeasible on their deaths without issue, leaving one or more of the other children surviving them. Hanie v. Grissom, 178 Miss. 108, 172 So. 500, 1937 Miss. LEXIS 189 (Miss. 1937).

Will executed in 1929 by testatrix dying in 1929, and providing that if any of children to whom testatrix left certain realty should die without children, his or her share in such realty should go equally to testatrix' children that were living, held not violative of rule against perpetuities or the two-donee statute, as respects interest passing on death of one child in 1933 without issue. Hanie v. Grissom, 178 Miss. 108, 172 So. 500, 1937 Miss. LEXIS 189 (Miss. 1937).

As to share given directly to testator's daughter, two-donee statute as it read in 1871 did not affect right of testator's sisters and brothers nor their descendants from taking as purchasers under will. Darrow v. Moore, 163 Miss. 705, 142 So. 447, 1932 Miss. LEXIS 85 (Miss. 1932).

Devise to two daughters providing that in case of daughters predeceasing testatrix their children to inherit each daughter's share, or if one died without children whole estate to go to other, or if both died without children estate to go over, contingency provided against was death of daughters before testatrix and upon their survival of testatrix they took a fee simple. Nations v. Colonial & United States Mortg. Co., 115 Miss. 741, 76 So. 642, 1917 Miss. LEXIS 260 (Miss. 1917).

The statute will not be construed to add the words "then living" to a limitation to the descendants of the donee of a life interest. Caldwell v. Willis, 57 Miss. 555, 1880 Miss. LEXIS 4 (Miss. 1880), disapproved, Carter v. Berry, 243 Miss. 356, 140 So. 2d 843 (Miss.).

In a devise to the son for life, and, after his death, to his lineal descendants, to the remotest posterity, and, in case of failure of lineal descendants, to the heirs of the devisor, the limitation over is void. Powell

v. Brandon, 24 Miss. 343, 1852 Miss. LEXIS 56 (Miss. 1852).

In a devise to the daughter and the heirs of her body, but, if she die without issue, then to the children of the devisor alive at her death, the limitation over is valid. Kirby v. Calhoun, 16 Miss. 462, 1847 Miss. LEXIS 43 (Miss. 1847).

RESEARCH REFERENCES

ALR.

Nontrust life estate expressly given for support and maintenance, as limited thereto. 26 A.L.R.2d 1207.

Timber rights of life tenant. 51 A.L.R.2d 1374.

Modern status of the rule in Shelley's Case. 99 A.L.R.2d 1161.

Am. Jur.

28 Am. Jur. 2d, Estates §§ 363 et seq.

CJS.

31 C.J.S., Estates § 144.

§ 89-1-15. Estates in fee tail prohibited.

Estates in fee tail are prohibited; and every estate which, but for this statute, would be an estate in fee tail, shall be an estate in fee simple; but any person may make a conveyance or a devise of lands to a succession of donees then living, and upon the death of the last of said successors to any person or any heir.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (24); 1857, ch. 36, art. 3; 1871, § 2286; 1880, § 1190; 1892, § 2436; 1906, § 2765; Hemingway's 1917, § 2269; 1930, § 2117; 1942, § 838.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Construction of terms.
3. Restraints on alienation.
4. Validity of devise—generally.
5. —Partial validity.
6. —Under rule against perpetuities.
7. Resulting estates—generally.
8. —Fee simple.
9. —Life estate.
10. Miscellaneous.

1. In general.

The underlying purposes accomplished by the rule against perpetuities and the rule against restraints on alienation are the same. Patterson v. Patterson, 193 So. 2d 575 (Miss. 1967).

This section; prohibiting estates in fee tail does not by its terms abrogate the common law rule that disabling restraints upon the alienation of a legal life estate or fee are void. Patterson v. Patterson, 193 So. 2d 575 (Miss. 1967).

This statute deals only with conveyances or devises of lands, and is not applicable to personal property. Magee v. Estate of Magee, 236 Miss. 572, 111 So. 2d 394, 1959 Miss. LEXIS 352 (Miss. 1959).

This section not applicable to personalty. Thomas v. Thomas, 97 Miss. 697, 53 So. 630, 1910 Miss. LEXIS 313 (Miss. 1910).

2. Construction of terms.

A will devising testatrix's real estate equally to a son and two daughters in common, and providing that if one of the devisees should die without leaving bodily heirs his or her share should go to the survivors, or if two of them should die without bodily heirs the land should go to the survivor, and that if either of the three devisees should die leaving bodily heirs, the heirs were to take the deceased parent's share, violated the former "two donees" provision of this section (Code 1892, § 2436) permitting a devise of lands to a succession of donees then living not exceeding two and to the heirs of the body of the remainderman, and, in default thereof, to the right heirs of the donor, in fee simple, so that under the will the three devisees named as first takers took a determinable fee simple, subject to be defeated as to each share by the death of the devisee without bodily heirs, and upon the death of the two devisees named as first takers the entire estate finally vested in fee simple in the remaining devisee. Carter v. Sunray Mid-Continent Oil Co., 231 Miss. 8, 94 So. 2d 624, 1957 Miss. LEXIS 488 (Miss. 1957).

Under a conveyance to the grantors' daughter "and the children of her body," reserving a life estate to one of the grantors, the daughter, having no children at the time of the conveyance, takes a fee tail, which by this section [Code 1942, § 838] is converted into a fee simple. Ewing v. Ewing, 198 Miss. 304, 22 So. 2d 225, 1945 Miss. LEXIS 198 (Miss. 1945).

Where a grant or devise is made to one and his children, or issue, or the children or issue of his body, or equivalent words, and the named person has no child at the effective date of the instrument, the named person takes a fee simple title to the property conveyed or devised, unless the instrument, by express words or necessary implication, shows a clear intent to create a life estate in the named person, remainder to after-born children or issue. Ewing v. Ewing, 198 Miss. 304, 22 So. 2d 225, 1945 Miss. LEXIS 198 (Miss. 1945).

An intent on the part of the grantors of realty to an only daughter "and the children of her body," to convey a life estate to the daughter with remainder to her children may not be inferred where, at the time of the conveyance, which was in consideration of love and affection, the daughter was only 16 years of age and unmarried, so that it was problematical whether she would ever have children. Ewing v. Ewing, 198 Miss. 304, 22 So. 2d 225, 1945 Miss. LEXIS 198 (Miss. 1945).

Where a will devised one-half of a parcel of land to the testator's son for life, and then to the heirs of the body of the son in fee simple, the testator intended to devise a life estate to the son, with remainder after his death to the heirs of his body in fee simple, should he have such heirs, and, upon the son dying without heirs, the devise lapsed and reverted to the heirs of the testator. Boxley v. Jackson, 191 Miss. 134, 2 So. 2d 160, 1941 Miss. LEXIS 125 (Miss. 1941).

A former enactment of this statute; while permitting contingent ultimate limitations to the right heirs of the donor either generally or specifically, was construed as not changing the common law rule that a conveyance to one's own right heirs, like a deed without a grantee is void, and that when right heirs are designated as a class as such limitees, they take by descent and not by purchase, but when they are named specifically as individuals, they take by purchase and not by descent. West Tennessee Co. v. Townes, 52 F.2d 764, 1931 U.S. Dist. LEXIS 1696 (D. Miss. 1931).

Gift to son in trust for donor's children to farm lands during trust period and divide property, was donation to class, not violation of two-donee statute. Shannon v. Riley, 153 Miss. 815, 121 So. 808, 1929 Miss. LEXIS 80 (Miss. 1929).

Deed of property to one for life with remainder to children in fee, not an attempt to create estate in violation of this section. Reddoch v. Williams, 129 Miss. 706, 92 So. 831, 1922 Miss. LEXIS 84 (Miss. 1922).

Where death of persons is dealt with as uncertain event it is presumed that death at a particular time or under particular circumstances is meant, and where circumstances do not appear it is presumed death is to occur prior to death of devisee before vesting in him of the property in possession; holding otherwise would render devise void for uncertainty. Bibby v. Broome, 116 Miss. 70, 76 So. 835, 1917 Miss. LEXIS 299 (Miss. 1917).

Bequest for use of sons for life, then each father's part to his children, to be theirs when they reach 21 years, providing if any died before age or condition fulfilled without brothers or sisters his share should go to surviving grandchildren of testatrix of proper age on condition fulfilled, created an executory devise and not an "estate tail." Thomas v. Thomas, 97

Miss. 697, 53 So. 630, 1910 Miss. LEXIS 313 (Miss. 1910).

Where there was a devise to wife and children for their natural lives, and to children and heirs of their bodies if there should be any at the time of their death, and if not, to revert to the estate in gross and be again divided between testator's wife and children and to their heirs, "they" to take a life estate only, and the grandchildren were to take only such share as their deceased parent would have taken, the word "they" should be construed to refer to children of the testator and not to any surviving grandchild, in view of the dominant purpose of the will to vest a life estate in the testator's wife and children and remainder in fee to his grandchildren. Davenport v. Collins, 96 Miss. 716, 51 So. 449, 1910 Miss. LEXIS 143 (Miss. 1910).

3. Restraints on alienation.

Restraints on alienation during the lifetime of a life tenant are valid. Patterson v. Patterson, 193 So. 2d 575 (Miss. 1967).

Where will established a life estate in certain real property for one life tenant and prohibited sale of property until grandchildren remaindermen were 45 years of age, there resulted a restraint on alienation in excess of that permitted by this section. Patterson v. Patterson, 193 So. 2d 575 (Miss. 1967).

Clause in will prohibiting partition during life of widow, first life tenant, and of children, second life tenant, precludes partition during such period. Ford v. Smith, 162 Miss. 138, 137 So. 482, 1931 Miss. LEXIS 104 (Miss. 1931).

Testator may prevent alienation of property during period restrictions may be made under two-donee statute. Ford v. Smith, 162 Miss. 138, 137 So. 482, 1931 Miss. LEXIS 104 (Miss. 1931).

Devise in fee prohibiting alienation until 1975, with absolute devise over on death of first taker before such date, conveyed life estate subject to be converted into fee. Bratton v. Graham, 146 Miss. 246, 111 So. 353, 1927 Miss. LEXIS 179 (Miss. 1927).

Prohibition against alienation during life of first devisee is legal. Bratton v. Graham, 146 Miss. 246, 111 So. 353, 1927 Miss. LEXIS 179 (Miss. 1927).

Testator may prohibit alienation of life estate devised. Crawford v. Solomon, 131 Miss. 792, 95 So. 686, 1923 Miss. LEXIS 217 (Miss. 1923).

Where alienation not prohibited in will or deed, chancery court may sell land of minor for reinvestment, where interest is remainder. Crawford v. Solomon, 131 Miss. 792, 95 So. 686, 1923 Miss. LEXIS 217 (Miss. 1923).

4. Validity of devise—generally.

Provision limiting devise to 3 sisters and 2 brothers in case of death without descendants held invalid. Norfleet v. Norfleet, 151 Miss. 790, 119 So. 306, 1928 Miss. LEXIS 383 (Miss. 1928).

Devise of land to succession of donees, three in number, is void. Scott v. Turner, 137 Miss. 636, 102 So. 467, 1925 Miss. LEXIS 6 (Miss. 1925).

This section not violated where possible for remainder in fee to vest upon death of first life tenant. Stigler v. Shurlds, 131 Miss. 648, 95 So. 635, 1923 Miss. LEXIS 208 (Miss. 1923).

Principle that will may be sustained by dropping void ulterior limitation, not applicable where provision cannot be separated without interfering with manifest purpose of testator. Gully v. Neville, 55 So. 289 (Miss. 1911).

5. —Partial validity.

Although restraint upon alienation of a life estate until remaindermen thereof became 45 years of age was in excess of that permitted by this section, court applied doctrine of approximation and adjudicated the restraint valid during the life of the life tenant, and invalid thereafter. Patterson v. Patterson, 193 So. 2d 575 (Miss. 1967).

Portions of will which violate statute limiting suspension of alienation are rejected and valid portions are enforced, if enforcement is practicably possible and will not defeat dominant purpose of will. Federal Land Bank v. Newsom, 175 Miss. 114, 161 So. 864, 166 So. 345, 1935 Miss. LEXIS 27 (Miss. 1935).

Void ulterior limitations on estate will not void whole provision if first can be lawfully separated; will, if possible, will be sustained in so far as it does not offend against two-donee statute. Bratton v. Graham, 146 Miss. 246, 111 So. 353, 1927 Miss. LEXIS 179 (Miss. 1927).

Deed containing ulterior limitees held valid up to point where statute violated. Reddoch v. Williams, 129 Miss. 706, 92 So. 831, 1922 Miss. LEXIS 84 (Miss. 1922).

6. —Under rule against perpetuities.

Mississippi follows the "wait and see" doctrine with respect to the rule against perpetuities under which the future interest in question is held valid if the required contingency actually happens during the perpetuities period, even though the interest was not good at its creation because it was possible for the required contingency to happen outside the perpetuities period. C & D Inv. Co. v. Gulf Transport Co., 526 So. 2d 526, 1988 Miss. LEXIS 246 (Miss. 1988).

This section was inapplicable to a case where the court was called upon to determine whether the rule against perpetuities was violated by the provisions of a will leaving the bulk of testator's estate in trust which was to terminate when testator's youngest grandchild (whether living at the time of the execution of the will or thereafter born) became 25 years of age, but further providing that in no event should the trust continue for a longer period than 35 years from the date of the will. 243 Miss. 356, 140 So. 2d 843.

Court will construe ambiguous will, if reasonably possible, to render it valid under rule against perpetuities or two-donee statute. Bratton v. Graham, 146 Miss. 246, 111 So. 353, 1927 Miss. LEXIS 179 (Miss. 1927).

Where gift is invalid in part because of rule against perpetuities, separable parts violating rule may be rejected and rest upheld. Reddoch v. Williams, 129 Miss. 706, 92 So. 831, 1922 Miss. LEXIS 84 (Miss. 1922).

7. Resulting estates—generally.

Joint will operates as separate will of each; joint will of wife and second husband providing survivor to have property while unmarried, otherwise to go to all heirs, but if neither should marry at their death property to be divided between their heirs, wife intended to give husband life estate if he did not remarry with equal division among all her children by both husbands and their descendants, at his death. Hill v. Godwin, 120 Miss. 83, 81 So. 790, 1919 Miss. LEXIS 68 (Miss. 1919).

Devise for life with remainder to testator's heirs, vested remainder in living heirs at testator's death. Schlater v. Lee, 117 Miss. 701, 78 So. 700, 1918 Miss. LEXIS 214 (Miss. 1918).

Sons of donor held to take at his death a possibility coupled with an interest which they could convey. Alexander v. Richardson, 106 Miss. 517, 64 So. 217, 1913 Miss. LEXIS 165 (Miss. 1913).

8. —Fee simple.

Devise to A and heirs of his body is devise in fee simple. Bolton v. Barnett, 131 Miss. 802, 95 So. 721, 1923 Miss. LEXIS 220 (Miss. 1923).

Devise to son and daughter and heirs to be held, used, occupied and enjoyed in common until "my youngest grandchild now living or that may come into existence hereafter shall have reached the years of 21," gave son fee simple subject only to limitation, if any as to joint use, possession, etc. Fairchild v. Hardinson, 120 Miss. 236, 82 So. 73, 1919 Miss. LEXIS 82 (Miss. 1919).

Conveyance to woman and heirs of her body was conveyance in fee simple. Liberty Bank v. Wilson, 116 Miss. 377, 77 So. 145, 1917 Miss. LEXIS 310 (Miss. 1917).

Devise to two daughters providing that in case of their deaths, their children were to inherit each mother's share, or if one died without children whole estate was to go to other daughter, or if both died without children estate was to go over, contingency provided against was death of daughters before testatrix and upon their survival of testatrix they took a fee simple. Nations v. Colonial & United States Mortg. Co., 115 Miss. 741, 76 So. 642, 1917 Miss. LEXIS 260 (Miss. 1917).

Devise of land to nephew "and to the heirs of his body," gave nephew fee simple title. Wallace v. Wallace, 114 Miss. 591, 75 So. 449, 1917 Miss. LEXIS 77 (Miss. 1917).

Devise of lands to four daughters providing part of any dying without issue to go to survivors, gave each of daughters a fee simple defeasible upon death without issue leaving one or more devisees surviving, and was a valid executory devise. Armstrong v. Thomas, 112 Miss. 272, 72 So. 1006, 1916 Miss. LEXIS 104 (Miss. 1916).

Will devising land to nephews equally with provision that each should transfer his share to his children, and if any died without children his share to go to survivor or survivors, but if all died without children the entire property should go to grandsons for life or their heirs, or, on failure of heirs in both lines then to next of kin always preferring those bearing testator's name in equal degree of kinship, violated this statute and nephews took in fee. Nicholson v. Fields, 111 Miss. 638, 71 So. 900, 1916 Miss. LEXIS 354 (Miss. 1916).

Will of all testator's property to his "sister, at her death the heirs to have it," gave sister fee simple title. Harring v. Flowers, 91 Miss. 242, 45 So. 571, 1907 Miss. LEXIS 187 (Miss. 1907).

Conveyance or devise in trust to one and the heirs of his body creates a trust estate in fee simple. Powell v. Brandon, 24 Miss. 343, 1852 Miss. LEXIS 56 (Miss. 1852); Jordan v. Roach, 32 Miss. 481, 1856 Miss. LEXIS 228 (Miss. 1856); Dibrell v. Carlisle, 48 Miss. 691, 1873 Miss. LEXIS 91 (Miss. 1873).

9. —Life estate.

Where decedent died intestate, and the surviving children entered into an agreement effectively creating a life estate for one sibling who remained on the farm, the trial court properly applied contract interpretation rules, properly found that the intent of the agreement was not to limit restraint on alienation only to time of execution of contract, and properly held the agreement was not an unreasonable restraint on alienation; thus, plaintiff's partition action was dismissed. In re Estate of Harris v. Harris, 840 So. 2d 742, 2003 Miss. App. LEXIS 188 (Miss. Ct. App. 2003).

Devise of land to person for life with remainder to heirs creates life estate with remainder in fee. Stigler v. Shurlds, 131 Miss. 648, 95 So. 635, 1923 Miss. LEXIS 208 (Miss. 1923).

Devise of all estate to wife during widowhood, providing that if she remarried she should have one-half thereof during life with remainder to her children or if no children to testator's relatives, other half to go immediately to testator's relatives, gave wife at most indefeasible, nondevisable, and nondescendable life estate, and on her death without children her relatives took nothing. Hale v. Neilson, 112 Miss. 291, 72 So. 1011, 1916 Miss. LEXIS 107 (Miss. 1916).

Residuary devise of estate in equal shares to 7 children for life, providing on death of any his share should be equally divided among remainder, and on death of last child property to be equally divided among all testator's living grandchildren, was single gift of life estate continuing in life tenants as a class until all dead with remainder to grandchildren in fee, and did not violate statute. Redmond v. Redmond, 104 Miss. 512, 61 So. 552, 1913 Miss. LEXIS 58 (Miss. 1913).

Residuary devise to two nephews for their lives, and at their death to the heirs of their body, with gift over in case of their death without issue was in effect devised to each for life of survivor, so that only life of survivor could be counted in the succession of donees, and so construed did not violate statute. Henry v. Henderson, 103 Miss. 48, 60 So. 33, 1912 Miss. LEXIS 138 (Miss. 1912).

10. Miscellaneous.

A residuary bequest to the testator's son and grandchildren in equal shares, naming the five grandchildren who were alive at the time of execution, constituted a class bequest to all of the grandchildren rather than an individual bequest to each of the named grandchildren, where the evidence revealed that the testator was not aware that a sixth grandchild had been conceived, and that he was no less fond of the sixth grandchild than of the other five. Cain v. Dunn, 241 So. 2d 650, 1970 Miss. LEXIS 1351 (Miss. 1970).

This section had no application to the validity of a gas and oil lease, under which any interest acquired by the lessee was conveyed to him to take effect in praesenti, and by which provision was made for renewal as long as gas and oil should be produced in paying quantities, it was stipulated that if no well should be commenced before a specified date the lease would terminate, unless the lessee by such date should tender the lessor the sum of $100, which payment should operate as a renewal for twelve months, and that further deferments for like periods might be procured by similar payments, but which lease contained no limitation to postpone the vesting of the interest acquired until a future date, or that could be said to result in a restraint against alienation either to the mineral rights or to the fee itself. Lloyd's Estate v. Mullen Tractor & Equipment Co., 192 Miss. 62, 4 So. 2d 282, 1941 Miss. LEXIS 4 (Miss. 1941).

Testator's brothers and sisters of half blood, not being right heirs, gift over to them jointly with brothers and sisters of whole blood made them third donees under statute, and they could not take under will. Darrow v. Moore, 163 Miss. 705, 142 So. 447, 1932 Miss. LEXIS 85 (Miss. 1932).

In the absence of descriptive words to point out the individuals who were to take as contingent ultimate limitees, under a former enactment of this provision, right heirs took by descent and not by purchase. West Tennessee Co. v. Townes, 52 F.2d 764, 1931 U.S. Dist. LEXIS 1696 (D. Miss. 1931).

Under deed conveying standing timber with ten-year limitation to remove, right to perpetual extension of time for removal does not violate this section. Nichols v. Day, 128 Miss. 756, 91 So. 451, 1922 Miss. LEXIS 164 (Miss. 1922).

RESEARCH REFERENCES

ALR.

Mortgage foreclosure forbearance statutes-modern status. 83 A.L.R.4th 243.

Am. Jur.

28 Am. Jur. 2d, Estates §§ 44 et seq.

CJS.

31 C.J.S., Estates §§ 24-26 et seq.

§ 89-1-17. Alienation good for grantor's interest; remainder not affected.

All alienations and warranties of lands purporting to convey or pass a greater estate than the grantor may lawfully convey or pass, shall operate as alienation or warranties of so much of the right and estate in such lands as the grantor could lawfully convey, but shall not pass or bar the right to the residue of the estate purported to be conveyed; nor shall the alienation of any particular estate on which a remainder may depend, whether such alienation be by will or other writing, nor the union of such particular estate with the inheritance, by purchase or by descent, so operate, by merger or otherwise as to defeat, impair, or in any way affect such remainder.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (25); 1857, ch. 36, art. 7; 1871, § 2290; 1880, § 1199; 1892, § 2444; 1906, § 2774; Hemingway's 1917, § 2278; 1930, § 2118; 1942, § 839.

JUDICIAL DECISIONS

ANALYSIS

1. Conveyance as passing grantor's interest only.
2. Merger.

1. Conveyance as passing grantor's interest only.

A will devising real property to the testator's wife "to be hers during her lifetime, and to use the same for her personal comfort and benefit, as she may see fit and proper, without hindrance or trouble from anyone," creates only a life estate in the widow and does not, at her discretion, vest her with power to sell the fee. Old Ladies Home Asso. v. Platt, 252 Miss. 260, 172 So. 2d 770, 1965 Miss. LEXIS 1098 (Miss. 1965).

The objection that statutory provision permitting lease of sixteenth section lands for oil, gas and mineral exploration and development, and for entry upon such lands for such purposes, was unconstitutional because the lease might under its terms remain in force so long as oil and gas should be produced from the land and therefore longer than the 25 years prescribed by a constitutional provision, is obviated by the statute providing that conveyances purporting to convey or pass a greater estate than the grantor might lawfully convey or pass, shall operate and pass such a right or estate as the grantor might lawfully convey. Pace v. State, 191 Miss. 780, 4 So. 2d 270, 1941 Miss. LEXIS 184 (Miss. 1941).

Deed conveying partnership property passes interests of only those partners actually executing it. Tinnin v. Brown, 98 Miss. 378, 53 So. 780, 1910 Miss. LEXIS 74 (Miss. 1910).

Supervisors' deed to timber on school land passes only such interest as they could convey. L. N. Dantzler Lumber Co. v. State, 97 Miss. 355, 53 So. 1, 1910 Miss. LEXIS 286 (Miss. 1910), limited, Merrill Engineering Co. v. Capital Nat'l Bank, 192 Miss. 378, 5 So. 2d 666, 1942 Miss. LEXIS 5 (Miss. 1942).

Grantee in deed from widow with only dower interest does not hold adversely to remaindermen until widow's death. Anglin v. Broadnax, 97 Miss. 514, 52 So. 865, 1910 Miss. LEXIS 282 (Miss. 1910).

Deed from widow with only dower interest conveys only a life estate. Barrier v. Young, 96 Miss. 160, 50 So. 559, 1909 Miss. LEXIS 32 (Miss. 1909).

Vendor's right to subject land to payment of purchase money is affected by this statute. Howell v. Hill, 94 Miss. 566, 48 So. 177, 1909 Miss. LEXIS 337 (Miss. 1909).

2. Merger.

This section prevents merger of contingent remainder and life estate in holder of fee. City Sav. Bank & Trust Co. v. Cortright, 122 Miss. 75, 84 So. 136, 1920 Miss. LEXIS 420 (Miss. 1920).

RESEARCH REFERENCES

ALR.

Termination of trust where life interest and remainder or reversion are acquired by same person. 50 A.L.R.2d 1161.

Conveyance of land as including mature but unharvested crops. 51 A.L.R.4th 1263.

Mortgage foreclosure forbearance statutes-modern status. 83 A.L.R.4th 243.

Am. Jur.

23 Am. Jur. 2d, Deeds § 289.

28 Am. Jur. 2d, Estates §§ 162, 163.

51 Am. Jur. 2d, Life Tenants and Remaindermen § 84.

CJS.

26A C.J.S., Deeds §§ 231-246 et seq.

§ 89-1-19. Right of entry not tolled by death of disseizor.

If any disseizor of lands who has no right or title therein, die seized thereof, his dying seized shall not be such descent in law to the heir of the disseizor as to take away the entry of the person who, at the time of such descent, had lawful right of entry.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 3 (3); 1857, ch. 36, art. 10; 1871, § 2293; 1880, § 1200; 1892, § 2445; 1906, § 2775; Hemingway's 1917, § 2279; 1930, § 2119; 1942, § 840.

Cross References — Unlawful entry and detainer generally, see §§ 11-25-1 et seq.
Descent of land, see § 91-1-3.

RESEARCH REFERENCES

ALR.
Mortgage foreclosure forbearance statutes-modern status. 83 A.L.R.4th 243.

§ 89-1-21. How body politic, public or private corporation may convey land.

All bodies politic and public corporations may convey their lands by and under the corporate seal and the signature of an officer; and such officer signing the same may acknowledge the execution of the deed, or proof thereof may be made as in other cases.

Any private corporation may convey lands by a conveyance signed in its name by an officer or by an authorized agent or attorney in fact; and such officer, agent or attorney in fact signing the same may acknowledge the execution of the conveyance, or proof thereof may be made as in other cases. The absence of the corporate seal shall not affect the validity of a conveyance by a private corporation so executed.

HISTORY: Codes, 1857, ch. 36, art. 33; 1871, § 2316; 1880, § 1194; 1892, § 2437; 1906, § 2766; Hemingway's 1917, § 2270; 1930, § 2120; 1942, § 841; Laws, 1956, ch. 175.

Cross References — Constitutional provision in regard to landholding by corporations, see MS Const Art. 4, § 84.
Limitation of actions to recover realty because of defective conveyance by corporation, see § 15-1-11.
Prohibition against corporation purchasing public lands, see § 29-1-75.

JUDICIAL DECISIONS

1. In general.

A bank was not obligated to go behind this section authorizing a private corporation to convey lands by conveyance signed in its name by an officer or authorized agent, or behind a certified copy of a corporate resolution delivered to it by the corporation's secretary, providing that the president and any vice-president could execute deeds of trust, to determine whether the two officers who did execute a deed of trust were in fact authorized to do so by the corporate resolution which appeared on the corporate minutes. Rivervalley Co. v. Deposit Guaranty Nat'l Bank, 331 F. Supp. 698, 1971 U.S. Dist. LEXIS 12606 (N.D. Miss. 1971).

Corporate deed executed by secretary to himself as grantee not void, where president also joined. Mexican Gulf Land Co. v.

Globe Trust Co., 125 Miss. 862, 88 So. 512, 1921 Miss. LEXIS 174 (Miss. 1921).

Unsealed deed by corporation will not support plaintiff's title in ejectment. Littelle v. Creek Lumber Co., 99 Miss. 241, 54 So. 841, 1911 Miss. LEXIS 199 (Miss. 1911).

RESEARCH REFERENCES

Am. Jur.

19 Am. Jur. 2d, Corporations § 1791.

CJS.

19 C.J.S., Corporations §§ 644 et seq.

§ 89-1-23. Aliens holding land.

Resident aliens may acquire and hold land, and may dispose of it and transmit it by descent, as citizens of the state may. Except as otherwise provided in this section, nonresident aliens shall not hereafter acquire or hold land, but a nonresident alien may have or take a lien on land to secure a debt, and at any sale thereof to enforce payment of the debt may purchase the same, and thereafter hold it, not longer than twenty (20) years, with full power during said time to sell the land, in fee, to a citizen; or he may retain it by becoming a citizen within that time. All land held or acquired contrary to this section shall escheat to the state; but a title to real estate in the name of a citizen of the United States, or a person who has declared his intention of becoming a citizen, whether resident or nonresident, if he be a purchaser or holder, shall not be forfeited or escheated by reason of the alienage of any former owner or other person.

Any person who was or is a citizen of the United States and became or becomes an alien by reason of marriage to a citizen of a foreign country, may hereafter inherit, or if he or she heretofore inherited or acquired or hereafter inherits, may hold, own, transmit by descent or transfer land free from any escheat to the State of Mississippi, if said land has not heretofore escheated by final valid order or decree of a court of competent jurisdiction.

Nonresident aliens who are citizens of Syria or the Lebanese Republic may inherit property from citizens or residents of the State of Mississippi.

Nonresident aliens may acquire and hold not to exceed three hundred twenty (320) acres of land in this state for the purpose of industrial development thereon. In addition, any nonresident alien may acquire and hold not to exceed five (5) acres of land for residential purposes. The nonresident alien may dispose of any such land, but if any land acquired for industrial development ceases to be used for industrial development while owned by a nonresident alien, it shall escheat to the state. The limitation set forth in this paragraph shall not apply to corporations in which the stock thereof is partially or wholly owned by nonresident aliens.

HISTORY: Codes, 1892, § 2439; 1906, § 2768; Hemingway's 1917, § 2272; 1930, § 2121; 1942, § 842; Laws, 1924, ch. 165; Laws, 1938, ch. 354; Laws, 1940, ch. 237; Laws, 1988, ch. 439, § 2, eff from and after passage (approved April 25, 1988).

Cross References — Institution of quo warranto proceedings against alien acquiring or holding land contrary to law, see § 11-39-3.

Prohibition against nonresident alien purchasing public lands, see § 29-1-75.
Escheats generally, see §§ 89-11-1 et seq.

JUDICIAL DECISIONS

1. In general.

Circumstances negated prolongation of three year period in which Honduran widow of United States citizen owning land in Mississippi could sell the land and keep the proceeds, as provided by 1928 treaty with Honduras, where widow, although represented by counsel during closing of husband's affairs in Honduras, made no inquiry nor took any action to sell land during twelve year period between her husband's death and her own. De Tenorio v. McGowan, 510 F.2d 92, 1975 U.S. App. LEXIS 15570 (5th Cir. Miss. 1975).

This section yields to any applicable provision of any valid treaty of the United States with a foreign country, constituting a part of the supreme law of the land under article 6, clause 2, of the United States Constitution. De Tenorio v. McGowan, 510 F.2d 92, 1975 U.S. App. LEXIS 15570 (5th Cir. Miss. 1975).

This section [Code 1942, § 842] is void, in so far as it conflicts with any existing treaty between the United States and the Republic of Italy. Guiseppe v. Cozzani, 238 Miss. 273, 118 So. 2d 189, 1960 Miss. LEXIS 401 (Miss. 1960).

Foreign corporation may do business in other state or country and sue in its courts, unless forbidden by statute or contrary to public policy. State ex rel. Brown v. Scottish American Mortg. Co., 111 Miss. 98, 71 So. 291, 1916 Miss. LEXIS 247 (Miss. 1916).

Foreign corporation, purchaser of land under trust deed, did not, by agreeing to rescind contract of sale to residents because of defect in title and repaying purchase price, become purchaser at sale for payment of debt as it merely reacquired its original title; statute contemplates involuntary sale where alien buys only as last resort to protect lien. State ex rel. Brown v. Scottish American Mortg. Co., 111 Miss. 98, 71 So. 291, 1916 Miss. LEXIS 247 (Miss. 1916).

Common law excluded alien from inheriting from citizen. Scottish American Mortg. Co. v. Butler, 99 Miss. 56, 54 So. 666, 1910 Miss. LEXIS 14 (Miss. 1910).

Nonresident alien mortgagee obtaining possession through tenants under void sale and receiving rents for more than 10 years under claim of title secured a perfect title against mortgagor. Scottish American Mortg. Co. v. Butler, 99 Miss. 56, 54 So. 666, 1910 Miss. LEXIS 14 (Miss. 1910).

RESEARCH REFERENCES

ALR.

Mortgage foreclosure forbearance statutes-modern status. 83 A.L.R.4th 243.

Am. Jur.

3B Am. Jur. 2d, Aliens and Citizens §§ 1731, 1732.

CJS.

3 C.J.S., Aliens §§ 5 et seq.

§ 89-1-25. Quitclaim deeds and disclaimers of title by school district boards of trustees, municipalities and boards of supervisors.

In all cases where a board of trustees of any school district, governing authorities of any municipality or board of supervisors of any county in the State of Mississippi has heretofore attempted to convey or to obtain title to real property or any interest therein and thereafter any question of title arises with reference to the procedure of conveyance, description of the property attempted to be conveyed or obtained or other matters connected therewith, and the governing authority of said school district, municipality or county determines by order entered on its minutes that the said political subdivision is asserting no further claim of title, that at the time of said attempted conveyance or disposition of said property, if property was conveyed or disposed of by the political subdivision, the said political subdivision did then receive the fair and reasonable market value of said property, and that a period of at least five (5) years has elapsed from the date of the said original attempted conveyance or disposition or obtaining of title of said property; the said board of trustees of said school district, governing authorities of said municipality or board of supervisors of said county, as the case may be, is thereupon hereby authorized, in its discretion, to execute quitclaim deeds and disclaimers of title on behalf of said political subdivision, after which any right or claim of said political subdivision in and to said realty shall be cut off and not thereafter brought into issue. Any such quitclaim deed or disclaimer of title heretofore executed by or on behalf of said political subdivision in accordance with the foregoing shall likewise be valid if executed in accordance with the provisions hereof.

HISTORY: Codes, 1942, § 846.5; Laws, 1960, ch. 321; Laws, 1974, ch. 359, eff from and after passage (approved March 14, 1974).

Cross References — Authority of board of supervisors to sell real estate belonging to county, see § 19-7-3.

Power of municipality to sell real estate, see § 21-17-1.

Sale of school property not used for school purposes, see §§ 37-7-451, 37-27-43.

OPINIONS OF THE ATTORNEY GENERAL

Any interest of the municipality in property owned by the county may be extinguished pursuant to this section by (a) a conveyance of such interest by the city to the county, or (b) the execution by the city of a quitclaim deed or disclaimer of title to a purchaser from the county. Creekmore, March 26, 1999, A.G. Op. #99-0129.

RESEARCH REFERENCES

ALR.

Mortgage foreclosure forbearance statutes-modern status. 83 A.L.R.4th 243.

§ 89-1-27. Conveyances by masters, commissioners, sheriffs or other officers.

Conveyances by masters, commissioners, sheriffs, and constables for lands sold by virtue of any decree or judgment of any court in this state, shall be good and effectual for passing all the interest the defendant had in the lands to the purchaser thereof, but shall not prejudice the rights of other claimants. In case any master, commissioner, sheriff, or other officer should, for any cause whatever, fail or omit to make such conveyance, without good cause for the omission or failure, during his continuance in office, the court which rendered the judgment or decree may, on petition for that purpose, order the successor of such master, commissioner, sheriff, or other officer, to make a proper conveyance to the purchaser; and all conveyances made by masters, commissioners, sheriffs, or other officers, shall be acknowledged or proved and recorded as other conveyances. In case any tax collector should fail to make a conveyance for land sold by him for taxes of any kind during his continuance in office, the board of supervisors of the proper county, on petition for that purpose and proof of the purchase and payment of the money, may order the successor of such tax collector to make a conveyance to the purchaser.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (35); 1857, ch. 36, art. 26; 1871, § 2309; 1880, § 1198; 1892, § 2442; 1906, § 2771; Hemingway's 1917, § 2275; 1930, § 2127; 1942, § 848.

Cross References — Operation of chancery court decree as conveyance, see § 11-5-85.

Conveyance of land sold under execution, see §§ 13-3-187, 13-3-189.

Sales under execution, see § 13-3-161.

Form of conveyance by sheriff, see § 89-1-65.

Form of conveyance by administrator, executor, guardian, master, or commissioner, see § 89-1-67.

Indexing of conveyances by sheriffs, constables, marshals, masters, commissioners, executors, administrators, guardians, or trustees, see § 89-5-35.

Power of executors and administrators to make deeds of conveyance, see § 91-7-223.

Sale of land by guardian in the interest of ward, see § 93-13-51.

JUDICIAL DECISIONS

1. In general.

Tax deed erroneously reciting sale made March 4, 1906, instead of correct date March 4, 1907, cannot be reformed or validated in ex parte proceeding before supervisors. Clark v. Hibbler, 109 Miss. 432, 69 So. 220, 1915 Miss. LEXIS 175 (Miss. 1915).

Purchaser at sheriff's or commissioner's sale is purchaser in invitum, and caveat emptor applies. Wells v. Gay & Ellarbee, 93 Miss. 268, 46 So. 497 (Miss. 1908).

Sale under trust deed of 400 acres in bulk instead of 160 acre tracts is void. McClusky v. Trussel, 90 Miss. 544, 44 So. 69, 1907 Miss. LEXIS 110 (Miss. 1907).

§ 89-1-29. Spouse's role in conveying homestead; incompetent spouse; limited power of attorney in conveyance of homestead.

A conveyance, mortgage, deed of trust or other incumbrance upon a homestead exempted from execution shall not be valid or binding unless signed by the spouse of the owner if the owner is married and living with the spouse or by an attorney in fact for the spouse. But where the spouse of the owner of the homestead exempted from execution has been adjudicated incompetent, then the owner of the homestead may file a petition in the chancery court and allege in the petition the incompetence of the spouse and the adjudication of incompetency of the spouse and the facts of the case. The summons for the spouse who has been adjudicated incompetent shall be issued and be served in the same manner as process is served in other cases on persons who are incompetent. The court shall hear the case in vacation or in termtime as in other cases, and if the court finds the spouse to be incompetent and the owner entitled to relief, the court by decree shall authorize and empower the owner to execute a conveyance, mortgage, deed of trust or other incumbrance upon the homestead without the signature of the spouse. However, no mortgage or deed of trust executed in favor of the Farmers Home Administration at the time of the purchase of real estate to secure the payment of the money used to purchase the real estate shall be invalid because it is not signed by the spouse of the owner. All powers of attorney authorizing any conveyance, mortgage, deed of trust or other incumbrance upon a homestead shall designate an attorney in fact other than the spouse and shall comply with the provisions of Chapter 3 of Title 87.

HISTORY: Codes, 1880, § 1258; 1892, § 1983; 1906, § 2159; Hemingway's 1917, § 1834; 1930, § 1778; 1942, § 330; Laws, 1924, ch. 169; 1980, ch. 514, § 1; Laws, 2007, ch. 419, § 1; Laws, 2008, ch. 442, § 23, eff from and after July 1, 2008.

Cross References — Conveyances by attorney in fact generally, see § 87-3-3.

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ANALYSIS

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1. In general.

Court is unwilling to read the statute to require that both spouses sign a homestead application in order for it to be effective. Dixon v. Jones (In re Will of Jones), 138 So. 3d 205, 2014 Miss. App. LEXIS 230 (Miss. Ct. App. 2014).

There was no merit in bank customers' argument that the 1997 renewal and extension of the previous deeds of trust deprived them of their homestead exemption; the customers admitted that the bank had a lien on their house at all times prior to the 1997 renewal. Whitefoot v. BancorpSouth Bank, 856 So. 2d 639, 2003 Miss. App. LEXIS 591 (Miss. Ct. App. 2003), cert. denied, 866 So. 2d 473, 2004 Miss. LEXIS 206 (Miss. 2004), cert. denied, 543 U.S. 833, 125 S. Ct. 148, 160 L. Ed. 2d 52, 2004 U.S. LEXIS 5851 (U.S. 2004).

Statutes granting homestead exemption are entitled to be liberally construed. Daily v. Gulfport, 212 Miss. 361, 54 So. 2d 485, 1951 Miss. LEXIS 457 (Miss. 1951).

Conditions existing at time of execution of the instrument conveying homestead determine its validity or invalidity, which cannot be affected by subsequent events. Hughes v. Hahn, 209 Miss. 293, 46 So. 2d 587, 1950 Miss. LEXIS 388 (Miss. 1950).

If a husband owns no assignable interest in the land which might otherwise be claimed as a homestead, statute has no application. Davis v. Davidor, 200 Miss. 657, 27 So. 2d 371, 1946 Miss. LEXIS 335 (Miss. 1946).

A conveyance of the homestead by the husband in which the wife does not join is not valid or binding if he is living with his wife or, even if he is not living with her, if at the time of the execution thereof the husband was non compos mentis touching all matters connected with and all duties and obligations owing to her. Moseley v. Larson, 86 Miss. 288, 38 So. 234, 1905 Miss. LEXIS 18 (Miss. 1905).

A person who is both a citizen and resident of this state, as well as a householder having a family, is entitled to homestead exemption. Vignaud v. Dean, 77 Miss. 860, 27 So. 881, 1900 Miss. LEXIS 37 (Miss. 1900).

The owner of a homestead has no vested right in the statute prescribing the mode of the alienation; and the law requiring the wife to join in the conveyance by the husband of his homestead applies to all conveyances hereafter made by him, although he owned the land in fee in his own right prior to the passage of the statute. Massey v. Womble, 69 Miss. 347, 11 So. 188, 1891 Miss. LEXIS 94 (Miss. 1891).

The section [Code 1942, § 332] does not prevent the wife from devising her homestead. Kelly v. Alred, 65 Miss. 495, 4 So. 551, 1888 Miss. LEXIS 30 (Miss. 1888).

The conditions existing at the time of the execution of the instrument determine its validity. Cummings v. Busby, 62 Miss. 195, 1884 Miss. LEXIS 51 (Miss. 1884).

2. Construction with other laws.

In view of the provisions of §§ 11-21-3, 93-3-1 and 93-3-3, § 89-1-29 did not preclude a wife, who held real property as joint tenant with husband from whom she was separated but not divorced, from maintaining an action to partition the property, notwithstanding that husband continued to reside on the property and claimed it as his homestead. Trigg v. Trigg, 498 So. 2d 334, 1986 Miss. LEXIS 2779 (Miss. 1986).

Conveyance of homestead by husband alone in settlement of claim for labor is governed by this section [Code 1942, § 330] and not Code 1906, § 2156 [Code 1942, § 327]. Chatman v. Poindexter, 101 Miss. 496, 58 So. 361, 1911 Miss. LEXIS 163 (Miss. 1911).

3. What constitutes homestead.

In a suit by an heir of deceased grantor to enjoin removal of timber from grantor's homestead under a timber deed which was void as to homestead because the wife of grantor did not sign, where it appeared that the grantor did not specifically designate the 160 acres which constituted the homestead tract out of 300 acre tract covered by deed, and the court should have appointed commissioners under the statute to make the allotment. Thompson v. Dyess, 218 Miss. 770, 67 So. 2d 721, 1953 Miss. LEXIS 602 (Miss. 1953).

The statute does not require the actual utilization of every acre of land in a tract before it can be claimed as a homestead. Daily v. Gulfport, 212 Miss. 361, 54 So. 2d 485, 1951 Miss. LEXIS 457 (Miss. 1951).

Where lands are not contiguous because a road separated them, such a separation does not necessarily defeat a homestead claim. Daily v. Gulfport, 212 Miss. 361, 54 So. 2d 485, 1951 Miss. LEXIS 457 (Miss. 1951).

4. Validity of conveyances in general.

Statutory signature requirement cannot be waived; by statute, the quitclaim deed attempting to convey the home without the wife's signature was invalid. Dixon v. Jones (In re Will of Jones), 138 So. 3d 205, 2014 Miss. App. LEXIS 230 (Miss. Ct. App. 2014).

Wife's homestead was to be determined as of the date of execution of the deed. Since the husband and wife still lived on the Tate County farm when the deed was executed, the wife was entitled to a homestead exemption; it was only after the land swap that the wife filed a homestead application in DeSoto County, and the chancellor properly declared the exchange deed (between the father and a son), void as to the wife's homestead interest. Davis v. Smith, 922 So. 2d 814, 2005 Miss. App. LEXIS 554 (Miss. Ct. App. 2005), cert. denied, 927 So. 2d 750, 2006 Miss. LEXIS 130 (Miss. 2006).

Conveyance of homestead to third parties by husband during lifetime of wife without her joining in conveyance is void. Ward v. Ward, 517 So. 2d 571, 1987 Miss. LEXIS 2968 (Miss. 1987).

In order to be valid, wife must sign her husband's conveyance of homestead property pursuant to the requirements of Code 1972, § 89-1-29, and where deed to homestead property was signed only by the husband without his wife's knowledge or approval, and there was nothing to indicate that the wife had any intent to abandon a conjugal relationship with her husband or to abandon the occupancy of the property, the deed was void. Hendry v. Hendry, 300 So. 2d 147, 1974 Miss. LEXIS 1614 (Miss. 1974).

A conveyance of homestead which is not signed by the wife of the owner is void. Travis v. Dantzler, 244 Miss. 360, 141 So. 2d 556, 1962 Miss. LEXIS 455 (Miss. 1962).

A deed is void as to the owner of the homestead who has executed a deed to the same until the other spouse joins therein with the contemporaneous consent of both; consequently, there can be no joinder by the wife in the execution of a conveyance of the homestead by the husband unless she executes the conveyance during his lifetime and with his consent. Hughes v. Hahn, 209 Miss. 293, 46 So. 2d 587, 1950 Miss. LEXIS 388 (Miss. 1950).

A deed to the husband's homestead is not invalid where the husband and wife each executed it, with the knowledge and consent of the other, although they did not execute it at the same time. Hughes v. Hahn, 209 Miss. 293, 46 So. 2d 587, 1950 Miss. LEXIS 388 (Miss. 1950).

A deed by the husband which attempts to convey away the homestead without the joinder of the wife in the execution of the conveyance is null and void as to both the husband and wife. Hughes v. Hahn, 209 Miss. 293, 46 So. 2d 587, 1950 Miss. LEXIS 388 (Miss. 1950).

Deed to homestead by husband alone is void. Yazoo Lumber Co. v. Clark, 95 Miss. 244, 48 So. 516, 1909 Miss. LEXIS 215 (Miss. 1909).

Common and contemporaneous consent existing, fact that wife signed deed to homestead 8 months after husband did not make it void. Howell v. Hill, 94 Miss. 566, 48 So. 177, 1909 Miss. LEXIS 337 (Miss. 1909).

Conveyance of homestead by wife without joinder of husband is a nullity. Levis-Zukoski Mercantile Co. v. McIntyre, 93 Miss. 806, 47 So. 435, 1908 Miss. LEXIS 140 (Miss. 1908).

5. —Conveyance pursuant to premarital contract.

Husband's deed to homestead without wife's joinder not void, where made pursuant to contract entered into prior to marriage. Minor v. Interstate Gravel Co., 130 Miss. 553, 94 So. 3, 1922 Miss. LEXIS 201 (Miss. 1922).

6. —Conveyance to spouse.

While one spouse may convey to another spouse his or her interest in homestead property, statutory mandate that any conveyance of that homestead without joinder of both spouses is invalid still applies to any conveyance to third party. There can be no operative conveyance or effectual release of exemption unless statutory method is pursued with strictness, and no requirement of statute may be waived by husband and wife or by either of them. Ward v. Ward, 517 So. 2d 571, 1987 Miss. LEXIS 2968 (Miss. 1987).

Deed signed by husband only, conveying part of homestead to wife and stepdaughter, held ineffective to convey interest to stepdaughter, though valid as between husband and wife. Smith v. Stanley, 159 Miss. 720, 132 So. 452, 1931 Miss. LEXIS 68 (Miss. 1931).

Husband may make valid deed conveying homestead to wife, but this does not defeat his right to occupy. Williams v. Green, 128 Miss. 446, 91 So. 39, 1922 Miss. LEXIS 128 (Miss. 1922).

Deed to homestead by husband alone invalid, though wife one of grantees. Chatman v. Poindexter, 101 Miss. 496, 58 So. 361, 1911 Miss. LEXIS 163 (Miss. 1911).

7. —Miscellaneous.

While it may have been the testator's intent to quitclaim the home to himself and his daughter, and to her alone after his death, he did not legally do so, as the quitclaim deed was signed solely by the testator, who was married, and this was not sufficient under the law. Dixon v. Jones (In re Will of Jones), 138 So. 3d 205, 2014 Miss. App. LEXIS 230 (Miss. Ct. App. 2014).

Miss. Code Ann. § 89-1-29 was a clear, unambiguous statute and its plain meaning had to be applied. Because the requirements of the statute were not met, i.e., a husband had not signed the deed of trust as required by the statute, the deed of trust was neither valid nor binding, and a trial court's judgment so declaring was affirmed. Countrywide Home Loans, Inc. v. Parker, 975 So. 2d 233, 2008 Miss. LEXIS 104 (Miss. 2008).

Forfeited tax patent obtained from the State of Mississippi was set aside because a husband conveyed homestead property without permission from his wife; therefore, the conveyance was void under Miss. Code Ann. § 89-1-29, and taxes should not have accumulated on the land since a total homestead exemption applied. Alexander v. Daniel, 904 So. 2d 172, 2005 Miss. LEXIS 370 (Miss. 2005).

In a proceeding to determine heirship, the chancellor did not err in holding that a deed was not signed by, or with the authority of, a wife, as required by § 89-1-29. Goodwin v. McMurphy, 435 So. 2d 639, 1983 Miss. LEXIS 2617 (Miss. 1983).

Warranty deed from mother to daughter, conveying homestead property on which mother and father were living as their home, was void where father's interest, granted to daughter by quitclaim deed, was not conveyed until some four years later. Gilmer v. Freeman, 336 So. 2d 717, 1976 Miss. LEXIS 1512 (Miss. 1976).

A married woman who executes an oil and gas lease of homestead property without joinder of her husband ratifies it where, after obtaining a divorce, she conveys the subject property and quitclaims her rights to oil and gas. Bounds v. Ohio Oil Co., 234 Miss. 277, 106 So. 2d 66, 1958 Miss. LEXIS 487 (Miss. 1958).

This section [Code 1942, § 332] requiring husband to join in conveyance of wife's homestead is not applicable where a husband and wife were separated for nine years when wife executed a mineral lease. Schmidt v. Humble Oil & Refining Co., 219 F.2d 551, 1955 U.S. App. LEXIS 4856 (5th Cir. Miss. 1955).

Where a wife did not join with husband in execution of a mineral deed, and the husband owned a legal title to the property, the mineral deed was valid as to the minerals which were under the land not within the homestead interest of the wife, but was invalid as to minerals under the homestead property. Lee v. Duncan, 220 Miss. 234, 70 So. 2d 615, 1954 Miss. LEXIS 431 (Miss. 1954).

Where husband executed deed to daughter of tract of land including homestead in 1942, but wife did not join in the conveyance until 1948 after the husband's death and after suit by his heirs for partition, deed by husband was null and void as to homestead and title thereof descended to his heirs at law as tenants in common. Hughes v. Hahn, 209 Miss. 293, 46 So. 2d 587, 1950 Miss. LEXIS 388 (Miss. 1950).

Execution by husband and wife of deed to homestead property to son, delivery of deed to clerk and its recordation, son being overseas in war, vested record and legal title to property in son, which could not be destroyed by destruction of recorded deed by mother. Wilbourn v. Wilbourn, 204 Miss. 206, 37 So. 2d 256, 1948 Miss. LEXIS 356 (Miss. 1948).

The conveyance of a part of a homestead by a woman alone while living with a man as his common-law wife after their earlier divorce and her subsequent marriage to another, who died shortly after assumption of the matrimonial common-law status, was invalid because not signed by the common-law husband. Oatis v. Mingo, 199 Miss. 896, 26 So. 2d 453, 1946 Miss. LEXIS 259 (Miss. 1946).

8. Validity of incumbrances in general.

In light of its dicta finding much force in the argument that the statute does not require a joint deed of husband and wife, the Mississippi Supreme Court would likely hold that a valid deed of trust was created when spouses contemporaneously signed separate but identical deeds of trust to their homestead because the parties clearly intended to create a valid deed of trust as part of one global transaction. Avakian v. Citibank, N.A., 773 F.3d 647, 2014 U.S. App. LEXIS 23159 (5th Cir. Miss. 2014).

Construing spouses' separately signed deeds of trust to their homestead together comports with the basic purpose of protecting the spouses because the deeds of trust provide a clear written record of the couples' contemporaneous consent to the creation of a deed of trust. Avakian v. Citibank, N.A., 773 F.3d 647, 2014 U.S. App. LEXIS 23159 (5th Cir. Miss. 2014).

Pursuant to Miss. Code Ann. § 89-1-29, where the wife debtor did not sign the deed of trust signed by her husband in favor of the creditor, the deed of trust was null and void. The fact that the wife conveyed the property to the husband on the same date that he signed the deed of trust did not affect this result. Rhymes v. Countrywide Home Loans, Inc. (In re Rhymes), 2008 Bankr. LEXIS 779 (Bankr. S.D. Miss. Mar. 14, 2008).

Pursuant to Miss. Code Ann. § 89-1-29, where the wife debtor did not sign the deed of trust signed by her husband in favor of the creditor, the deed of trust was null and void. However, because the creditor paid off two existing deeds of trust on the property, the creditor was entitled to be subrogated to the rights of the two creditors whose debts were secured by the property. Rhymes v. Countrywide Home Loans, Inc. (In re Rhymes), 2008 Bankr. LEXIS 779 (Bankr. S.D. Miss. Mar. 14, 2008).

Under Mississippi statute providing that deed of trust on homestead is invalid and not binding unless signed by spouse of owner if owner be married and living with spouse, validity of deed of trust is judged by circumstances existing at time of its execution, and subsequent actions by spouse who fails to join in execution cannot cure invalidity of instrument. Craddock v. Brinkley, 671 So. 2d 662, 1996 Miss. LEXIS 126 (Miss. 1996).

An encumbrance of homestead property signed by only one of the spouses is void and therefore may not be reformed on the ground of oversight. Strong v. Powell, 247 Miss. 55, 150 So. 2d 516, 1963 Miss. LEXIS 281 (Miss. 1963).

Husband and wife may execute valid mortgage on after-acquired property used as homestead. Adkinson & Bacot Co. v. Varnado, 91 Miss. 825, 47 So. 113, 1907 Miss. LEXIS 215 (Miss. 1907).

Husband and wife may execute valid mortgage on after-acquired property used as a homestead. Adkinson & Bacot Co. v. Varnado, 91 Miss. 825, 47 So. 113, 1907 Miss. LEXIS 215 (Miss. 1907).

A deed of trust by a husband alone being void, his widow and children take as tenants in common at his death. Hubbard v. Sage Land & Improv. Co., 81 Miss. 616, 33 So. 413, 1902 Miss. LEXIS 179 (Miss. 1902).

No conveyance of the homestead shall be valid unless signed by the wife of the owner. Duggan v. Champlin, 75 Miss. 441, 23 So. 179, 1897 Miss. LEXIS 133 (Miss. 1897).

A conveyance or encumbrance by the husband of the homestead without the wife joining in the deed is not valid. Rights to a homestead are not dependent upon mistaken or false statements made by the husband, but upon the fact of his being the head of a family and residing upon the premises as a home. Hinds v. Morgan, 75 Miss. 509, 23 So. 35, 1897 Miss. LEXIS 130 (Miss. 1897).

Contemporaneous assent of husband and wife, if living together, is essential to an incumbrance of the exempt homestead. Duncan v. Moore, 67 Miss. 136, 7 So. 221, 1889 Miss. LEXIS 45 (Miss. 1889).

9. —Instrument securing payment of purchase money.

Pursuant to Miss. Code Ann. § 89-1-29, where the wife debtor did not sign the deed of trust signed by her husband in favor of the creditor, the deed of trust was null and void. Creditor's argument that Miss. Code § 85-3-23 did not apply to debtors because a deed of trust was issued to secure a purchase money lien on the property and the homestead rights had not yet attached was without merit where the debtors had owned the property and had been occupying the property for some time prior to the time that the husband signed the deed of trust. Rhymes v. Countrywide Home Loans, Inc. (In re Rhymes), 2008 Bankr. LEXIS 779 (Bankr. S.D. Miss. Mar. 14, 2008).

Where a wife joined with her husband in executing a deed of trust to the homestead, belonging to the husband, and thereafter upon the destruction of the building by fire the insurance proceeds were paid to the husband who deposited them in his wife's name, but by agreement with the mortgagee most of such proceeds were paid to the mortgagee by the husband and used in rebuilding the destroyed home, the wife had no cause of action to set aside a foreclosure of the deed of trust since she was not prejudiced in her rights by the disposition made by her husband of the insurance money which belonged to him, not to her. McFarlane v. Plant, 185 Miss. 616, 188 So. 530, 1939 Miss. LEXIS 169 (Miss. 1939).

Deed of trust securing purchase money of homestead, valid without wife's signature. Jarvis v. Armstrong, 94 Miss. 145, 48 So. 1, 1908 Miss. LEXIS 35 (Miss. 1908).

Deed of trust securing money advanced for construction of house converted into homestead, valid without wife's signature. Jarvis v. Armstrong, 94 Miss. 145, 48 So. 1, 1908 Miss. LEXIS 35 (Miss. 1908).

Although the husband forges his wife's name to the mortgage on land including the homestead, to secure borrowed money (the mortgagee being innocent), and a part of the money is used to pay off the purchase-money debt secured by a vendor's lien on the whole land, the mortgagee, who takes up the note for the purchase-money debt will be subrogated to the rights of the holder of the purchase-money lien as against the homestead. North American Trust Co. v. Lanier, 78 Miss. 418, 28 So. 804, 1900 Miss. LEXIS 81 (Miss. 1900).

A similar statute (Laws 1873, p 78) held not to be applicable where the incumbrance was to secure the purchase-money of the homestead. Billingsley v. Niblett, 56 Miss. 537, 1879 Miss. LEXIS 159 (Miss. 1879).

10. —Miscellaneous.

Facts were undisputed that the proceeds of the U.S. Department of Housing and Urban Development's (HUD) subordinate loan were applied to cure the delinquent arrearage that had accrued on the primary loan; the court, however, found that the payment of the proceeds to cure the primary note arrearage did not permit the subordinate deed of trust to become a purchase money security interest. Since the deed of trust securing HUD's arrearage payment was not a purchase money security interest and since it was not signed by the debtor's spouse, the deed of trust was invalid. In re Burks, 421 B.R. 762, 2009 Bankr. LEXIS 4120 (Bankr. N.D. Miss. 2009).

Deed of trust being serviced was a valid lien encumbering debtor's homestead property even though it was not executed by his spouse. In re Burks, 421 B.R. 762, 2009 Bankr. LEXIS 4120 (Bankr. N.D. Miss. 2009).

Where the court made a finding, under Fed. R. Evid. 901(b)(3), that the debtor's signature on a deed of trust was forged, the deed of trust was void and unenforceable, pursuant to Miss. Code Ann. § 89-1-29 (1980). Ramsey v. Countrywide Home Loans, Inc. (In re Ramsey), 424 B.R. 217, 2009 Bankr. LEXIS 3541 (Bankr. N.D. Miss. 2009).

Arbitration clause in a contract between clients, a husband and a wife, and a termite company was enforceable against the wife, even though she did not sign the contract, because it did not encompass an incumbrance under Miss. Code Ann. § 89-1-29. Terminix Int'l, Inc., Ltd. P'ship v. Rice, 904 So. 2d 1051, 2004 Miss. LEXIS 1459 (Miss. 2004).

Invalidity of deed of trust arising from spouse's failure to sign deed of trust on homestead property was not cured by spouse's act of signing promissory note one year later evidencing indebtedness to deed of trust holder; note was not attachment to nor integral part of deed of trust. Craddock v. Brinkley, 671 So. 2d 662, 1996 Miss. LEXIS 126 (Miss. 1996).

Spouse's failure to sign deed of trust on homestead property given by husband as security for loan rendered deed of trust null and void as matter of law, and thus, foreclosure sale pursuant to deed of trust had to be set aside and title to property vested in owner's son who received has interest in property via laws of descent and distribution. Craddock v. Brinkley, 671 So. 2d 662, 1996 Miss. LEXIS 126 (Miss. 1996).

The statutory signing requirements of §§ 15-3-1, 89-1-3, 89-1-29 and 91-9-1 [repealed] were satisfied with respect to a deed of trust relating to homestead property, even though the wife neglected to sign the deed of trust document, where her signature appeared on the 2 attachments to the deed of trust-the property description and the adjustable rate mortgage rider-which constituted an integral part of the deed of trust. United Miss. Bank v. GMAC Mortgage Co., 615 So. 2d 1174, 1993 Miss. LEXIS 21 (Miss. 1993).

Bank was entitled to foreclose a deed of trust against homestead property for advances made to the husband, acting alone and without wife's knowledge, which were additional to the original indebtedness secured by the deed of trust contract where the contract contained a "dragnet clause" which clearly and unambiguously provided that its purpose was to "secure all loans and advances which Beneficiary has made or may hereafter make to the Grantor, or any of them"; nor did the fact that the husband pledged certain cattle as additional security for the advances, which were missing when the bank sought to replevy them, amount to a waiver on the part of the bank of the security granted it by the deed of trust. Newton County Bank, Louin Branch Office v. Jones, 299 So. 2d 215, 1974 Miss. LEXIS 1592 (Miss. 1974).

"Dragnet" clause contained in a deed of trust executed by a husband and wife on their homestead property, purporting to cover "any other or further indebtedness in the way of future advances hereunder, or otherwise, that the grantor, or either of them, may now or hereafter owe the beneficiary", was not broad enough to cover an indebtedness incurred by the husband on a conditional sales contract prior to the divorce, and without the wife's concurrence or knowledge, and discounted to a bank, beneficiary of the deed of trust, or on renewal notes signed by the husband after the divorce. Hudson v. Bank of Leakesville, 249 So. 2d 371, 1971 Miss. LEXIS 1157 (Miss. 1971).

Where the wife of the grantor failed to sign a deed granting right to remove timber from land owned by the grantor and occupied by him and his wife, this rendered deed void insofar as it affected the grantor's homestead. Thompson v. Dyess, 218 Miss. 770, 67 So. 2d 721, 1953 Miss. LEXIS 602 (Miss. 1953).

In an action to cancel a trust deed and a foreclosure deed on the ground that it was executed at the time the husband was married to a prior wife, husband alone executed the trust deed and realty involved was the homestead of husband and wife, the note and trust deed were valid although not signed by prior wife because at time of execution of note and deed husband and wife were separated and not living together. McGehee v. Middleton, 58 So. 2d 16 (Miss. 1952).

Doctrine "he who seeks equity must do equity" not applicable in suits by husband and wife to enjoin cutting of timber under contract signed by husband alone. Young v. Ashley, 123 Miss. 693, 86 So. 458, 1920 Miss. LEXIS 70 (Miss. 1920).

Deed to cut timber on homestead, not signed by wife was void, or at most only a license. Blair v. Frank B. Russell & Co., 120 Miss. 108, 81 So. 785, 1919 Miss. LEXIS 64 (Miss. 1919).

A deed of trust executed by a husband who is living with his wife is void as to the homestead exemption of one hundred and sixty acres included therein without the joinder of the wife, and his widow and children take as tenants in common at his death, and a release of all exemption rights which the beneficiary in the trust deed, without further consideration, procures from the widow in eighty acres adjoining the eighty acres on which the dwelling is situated, is void for all purposes except to fix the character of such eighty acres as a part of the homestead. Hubbard v. Sage Land & Improv. Co., 81 Miss. 616, 33 So. 413, 1902 Miss. LEXIS 179 (Miss. 1902).

A deed of trust drawn up and handed to the husband for his and his wife's signatures on a secular day, and after signature delivered on a secular day to the beneficiary without the latter's knowledge that it was signed on Sunday, is valid. Duggan v. Champlin, 75 Miss. 441, 23 So. 179, 1897 Miss. LEXIS 133 (Miss. 1897).

A conveyance by the husband of all the merchantable timber on his homestead, with an indefinite time for its removal, is an encumbrance of such homestead and void if the wife does not join. McKenzie v. Shows, 70 Miss. 388, 12 So. 336, 1892 Miss. LEXIS 119 (Miss. 1892).

Where a husband having jointly with his wife executed a mortgage intended to include their homestead, and afterwards without authority from her, but in an honest effort to correct the mistake, inserted the homestead which had been omitted from the description, the mortgage is inoperative as to the homestead. Foote v. Hambrick, 70 Miss. 157, 11 So. 567, 1892 Miss. LEXIS 56 (Miss. 1892).

11. Effect of abandonment of homestead.

Husband could not claim exemption in his former homestead after abandonment, and wife could not assert exemption which husband had abandoned, because effect of this would be to claim 2 exemptions for wife in same property. Joe T. Dehmer Distributors, Inc. v. Temple, 826 F.2d 1463, 1987 U.S. App. LEXIS 12486 (5th Cir. Miss. 1987).

In order for encumbered property to constitute homestead, owner must be living with spouse; when husband removes himself from homestead property without intent to return and wife consents, homestead is abandoned notwithstanding wife's continued residence on land; question whether owner of property is living with spouse is factual. Merchants Nat'l Bank v. Southeastern Fire Ins. Co., 751 F.2d 771, 1985 U.S. App. LEXIS 27780 (5th Cir. Miss. 1985).

Husband may convey abandoned homestead by separate deed. Lindsey v. Holly, 105 Miss. 740, 63 So. 222, 1913 Miss. LEXIS 257 (Miss. 1913).

A temporary removal because of necessity by husband and wife, they retaining an intention to return to the premises, is not an abandonment of the homestead. Collins v. Bounds, 82 Miss. 447, 34 So. 355, 1903 Miss. LEXIS 166 (Miss. 1903).

An incumbrance on the land of the husband, which was once his homestead, given by him alone when not residing on the land, is not rendered invalid because of an intention to re-occupy it in the future. Majors v. Majors, 58 Miss. 806, 1881 Miss. LEXIS 39 (Miss. 1881).

12. Effect of change of residence.

A deed of trust on property formerly occupied as a homestead executed by the husband alone, after moving from the homestead, is not invalid as to the wife. Grantham v. Ralle, 248 Miss. 364, 158 So. 2d 719, 1963 Miss. LEXIS 402 (Miss. 1963).

Husband who in good faith has selected another homestead may convey good title to his former homestead without the joining of his wife in the deed. Livelar v. Kepner, 244 Miss. 723, 146 So. 2d 346, 1962 Miss. LEXIS 502 (Miss. 1962).

An exemptionist who sells his homestead in order to make a change of residence, and which he afterwards effects, can, before removal, execute a valid conveyance of the property without his wife joining him therein. Wilson v. Gray, 59 Miss. 525, 1882 Miss. LEXIS 150 (Miss. 1882).

13. Effect of separation or divorce of parties to marriage.

A deed of trust on a marital homestead was invalid where (1) only the husband, and not the wife, signed the deed of trust, and (2) the deed of trust was executed prior to the separation and divorce of the husband and wife. Thurman v. Thurman, 770 So. 2d 1015, 2000 Miss. App. LEXIS 483 (Miss. Ct. App. 2000).

A conveyance of the homestead property by the husband without the signature of the wife is invalid, even though the wife be not living on the homestead property at the time of execution of the deed of conveyance, if her absence is occasioned by the act of the husband in driving her away from the home. Robbins v. Berry, 213 Miss. 744, 57 So. 2d 576, 1952 Miss. LEXIS 421 (Miss. 1952).

Even though a wife was guilty of collusion in a divorce proceeding, she was entitled to have a deed to the homestead canceled where she was living away from the husband and her absence was occasioned by an act of the husband in driving her away, and where the purchasers who bought the homestead were not innocent purchasers. Crosby v. Hatten, 213 Miss. 240, 56 So. 2d 705, 1952 Miss. LEXIS 356 (Miss. 1952).

The test whether the husband abandoned any homestead rights under statutes invalidating conveyance of the homestead is whether the husband had abandoned the conjugal relation with his wife and the occupancy of the property, but the wrongful ouster of the spouse does not constitute a wilful abandonment; and if a spouse voluntarily separates from the other and abandons the intention of living with him or her through no fault of the latter, he or she has abandoned any homestead rights. Etheridge v. Webb, 210 Miss. 729, 50 So. 2d 603, 1951 Miss. LEXIS 310 (Miss. 1951).

An abandonment of a homestead may be obtained by a free and voluntary separation of the parties and the test is whether the husband was away from the homestead with the mature intention not to return to it. Etheridge v. Webb, 210 Miss. 729, 50 So. 2d 603, 1951 Miss. LEXIS 310 (Miss. 1951).

A husband may not drive his wife away or otherwise by his own wrong cause her to leave, and thereupon exercise the assumed right to convey the homestead without her joinder in the conveyance, if nevertheless it remained her right and actual intention to return. Philan v. Turner, 195 Miss. 172, 13 So. 2d 819, 1943 Miss. LEXIS 126 (Miss. 1943).

The sole fact that the wife, for the time being, is living apart from her husband does not neutralize her right of veto upon a conveyance of the homestead by the husband. Philan v. Turner, 195 Miss. 172, 13 So. 2d 819, 1943 Miss. LEXIS 126 (Miss. 1943).

Where a wife leaves her husband with the intention not to return to the homestead, she loses her right to veto a conveyance of the homestead by her husband. Philan v. Turner, 195 Miss. 172, 13 So. 2d 819, 1943 Miss. LEXIS 126 (Miss. 1943).

The fact that a wife, leaving her husband, left some of her personal belongings at the home, while a fact to be considered in determining whether she left the homestead with the intention of returning, is not controlling. Philan v. Turner, 195 Miss. 172, 13 So. 2d 819, 1943 Miss. LEXIS 126 (Miss. 1943).

Where the wife's leaving her invalid husband in need of personal attention because of his bringing his widowed sister and her child to live with him and care for him while the wife was working, was without legal justification under the circumstances, the wife lost her right to veto his conveyance of the homestead, notwithstanding she may have intended to return to the homestead if and when her sister-in-law moved therefrom. Philan v. Turner, 195 Miss. 172, 13 So. 2d 819, 1943 Miss. LEXIS 126 (Miss. 1943).

A husband's conveyance of homestead property was not void because his wife did not join in the execution thereof, where the evidence showed that she was at the time voluntarily living away from him and refused to return to live with him. Sylvester v. Stevens, 186 Miss. 503, 191 So. 483, 1939 Miss. LEXIS 257 (Miss. 1939).

Permission given by husband after legal separation from wife to lumber company to enter land and cut and remove logs therefrom held binding, under statute, against wife claiming homestead rights in such land. Lewis v. Ladner, 177 Miss. 473, 168 So. 281, 172 So. 312, 1936 Miss. LEXIS 230 (Miss. 1936).

Proof of husband's abandonment of homestead in unlawful entry and detainer action against wife by purchaser of land at sale on foreclosure of trust deed executed by wife alone must be clear and decisive of such intention, accompanied by husband's removal from premises. Gardner v. Cook, 173 Miss. 244, 158 So. 150, 1934 Miss. LEXIS 389 (Miss. 1934).

Evidence in unlawful entry and detainer action held to show that defendant's husband had not abandoned defendant or their homestead when she executed trust deed, on foreclosure of which plaintiff purchased land, so that deed, in which husband did not join, was void. Gardner v. Cook, 173 Miss. 244, 158 So. 150, 1934 Miss. LEXIS 389 (Miss. 1934).

Where wife signed separation agreement without coercion and separation followed, husband's deed to homestead without wife's signature was not void. Board of Mayor & Aldermen of Booneville v. Clayton, 155 Miss. 428, 124 So. 490, 1929 Miss. LEXIS 310 (Miss. 1929).

Divorced wife of owner receiving part of wild land by decree in divorce cannot assert homestead right against purchaser under prior trust deed made by husband. Mounger v. Gandy, 110 Miss. 133, 69 So. 817, 1915 Miss. LEXIS 13 (Miss. 1915).

In legal contemplation, the husband is living with his wife, though driven by stress of pecuniary difficulties to absent himself from his wife and home in the effort to provide for himself and family, and a deed of conveyance to the homestead by the wife during such absence of the husband is invalid. Walton v. Walton, 76 Miss. 662, 25 So. 166, 1898 Miss. LEXIS 132 (Miss. 1898).

A husband who had driven his wife from his home and refused to permit her to return, cannot lawfully convey the premises to a third person, for the law will not suffer a husband to acquire by his wrong what the statute has denied him. Scott v. Scott, 73 Miss. 575, 19 So. 589, 1895 Miss. LEXIS 172 (Miss. 1895).

14. Rights and remedies of spouses.

Section 89-1-29 applies when spouses are married and living together on homestead; however, spouse forced off homestead retains § 89-1-29 veto power. Joe T. Dehmer Distributors, Inc. v. Temple, 826 F.2d 1463, 1987 U.S. App. LEXIS 12486 (5th Cir. Miss. 1987).

While § 89-1-29 does not give wife any property right or ownership, it does give her veto power. Ward v. Ward, 517 So. 2d 571, 1987 Miss. LEXIS 2968 (Miss. 1987).

A wife, who with her husband conveyed a homestead, had such an interest in the homestead that a life estate could be reserved to her as well as to her husband; since the homestead could not have been conveyed to the grantees without the consent of the wife, she would have the right to refuse to convey it unless the life estate was reserved to her. Moore v. Moore, 254 So. 2d 879 (Miss. 1971).

Where a husband and wife executed a deed of trust on their homestead property, and the deed contained a "dragnet" clause stating that it was intended to cover any other or further indebtedness that the grantors or either of them might thereafter owe the beneficiary, the clause was not sufficiently broad in its terms to secure an indebtedness of the husband on a conditional sales contract executed by the husband alone prior to the divorce of the parties and then discounted to the bank which was the beneficiary of the deed of trust, in the absence of the wife's knowledge of the transaction, and a foreclosure of the deed of trust, upon the husband's default under the conditional sales contract, would be enjoined. Hudson v. Bank of Leakesville, 249 So. 2d 371, 1971 Miss. LEXIS 1157 (Miss. 1971).

In suit by husband to cancel deed of conveyance executed by wife in which husband did not join, on ground that property conveyed was homestead property, husband is entitled to prove, if he can, that property, although belonging to wife, constitutes homestead, and that he was living with wife at time conveyance thereof was executed. Etheridge v. Webb, 204 Miss. 159, 37 So. 2d 168, 1948 Miss. LEXIS 351 (Miss. 1948).

In suit by husband to cancel deed of conveyance executed by wife in which husband did not join, on ground that property described in deed was homestead, burden of proof is on husband to prove that he was living with wife, either actually or in a legal sense, within the meaning of this section [Code 1942, § 332], at time she conveyed the property. Etheridge v. Webb, 204 Miss. 159, 37 So. 2d 168, 1948 Miss. LEXIS 351 (Miss. 1948).

A wife living separate and apart from her husband at the time of his death was entitled to cancellation of a conveyance, executed without her knowledge, consent, or signature, to property admittedly their homestead both at the time of the separation and of the husband's death. Stringer v. Arrington, 202 Miss. 798, 32 So. 2d 879, 1947 Miss. LEXIS 342 (Miss. 1947).

So long as the wife has the right and the will to remain at home, she is to be considered as living there within the meaning of the statute; the will to remain includes a situation where, being away without her own fault, the wife has the will to return, although, when she abandons the intention to return, she no longer has the right to veto a homestead conveyance even though she had the right theretofore to remain. Philan v. Turner, 195 Miss. 172, 13 So. 2d 819, 1943 Miss. LEXIS 126 (Miss. 1943).

This section [Code 1942, § 330] gives the wife the veto power against encumbrances or conveyances by her husband of the exempt homestead, but imposes no limitation of his common law rights to deal with the indebtedness secured by the homestead. McFarlane v. Plant, 185 Miss.

616, 188 So. 530, 1939 Miss. LEXIS 169 (Miss. 1939).

Wife's veto power against conveyance of homestead by husband is not a property right. Kimbrough v. Powell, 143 Miss. 498, 108 So. 498, 1926 Miss. LEXIS 286 (Miss. 1926).

Equity will protect right of wife in homestead; wife proper party in suit to protect homestead against those claiming under instrument signed by husband alone. Young v. Ashley, 123 Miss. 693, 86 So. 458, 1920 Miss. LEXIS 70 (Miss. 1920).

In that the wife has a mere veto power on the sale of a homestead and not a property right subject to bargain and sale, a promise made by the husband to the wife to secure her signature is void. New Orleans R. & M. S. Co. v. Gatti, 77 Miss. 754, 27 So. 601 (Miss. 1900).

Since a wife has only a veto power in respect to conveyance of a homestead, she cannot maintain a bill, the sole object of which is the cancellation of the husband's deed in which she did not join. Scott v. Scott, 73 Miss. 575, 19 So. 589, 1895 Miss. LEXIS 172 (Miss. 1895).

Although the wife must join in the conveyance of her husband's homestead, she has no estate therein, and is not the proper party to a bill by him to cancel the trust deed thereon given by him alone, and he cannot, by joining her as a complainant, avoid the requirement in a court of chancery to do equity by offering to pay the assured debt. Pounds v. Clarke, 70 Miss. 263, 14 So. 22, 1892 Miss. LEXIS 142 (Miss. 1892), overruled, McDonald v. Sanford, 88 Miss. 633, 41 So. 369, 1906 Miss. LEXIS 180 (Miss. 1906).

The wife has a mere veto power. Billingsley v. Niblett, 56 Miss. 537, 1879 Miss. LEXIS 159 (Miss. 1879); Smith v. Scherck, 60 Miss. 491, 1882 Miss. LEXIS 88 (Miss. 1882); Duncan v. Moore, 67 Miss. 136, 7 So. 221, 1889 Miss. LEXIS 45 (Miss. 1889); Scott v. Scott, 73 Miss. 575, 19 So. 589, 1895 Miss. LEXIS 172 (Miss. 1895); New Orleans R. & M. S. Co. v. Gatti, 77 Miss. 754, 27 So. 601 (Miss. 1900).

15. Rights of grantees under deeds.

A deed from a husband to his homestead, although void from the want of his wife's joinder therein, is good against a third party as color of title to sustain a claim by adverse possession. Johnson v. Hunt, 79 Miss. 639, 31 So. 205, 1901 Miss. LEXIS 100 (Miss. 1901); Avera v. Williams, 81 Miss. 714, 33 So. 501, 1902 Miss. LEXIS 195 (Miss. 1902).

A deed executed by a husband living with his wife purporting to convey his homestead is not good to convey any interest whatever therein unless it be signed by the wife. Hence, the vendee in a deed from a husband living with his wife which she did not sign, purporting to convey his homestead, cannot maintain ejectment for the lands after the death of the husband against those who claim under his heirs. Johnson v. Hunt, 79 Miss. 639, 31 So. 205, 1901 Miss. LEXIS 100 (Miss. 1901).

16. Rights of agents under real estate listing contracts.

An exclusive real estate listing contract served to make the real estate agent the special agent of the owner, with limited power to find a purchaser ready, willing, and able to buy the property on terms and conditions fixed by the appellee; but the execution of such a contract did not serve to permit the agent to acquire any legal interest in the property placed in his hands for sale, nor did the contract create any incumbrance upon the property involved. C. Buck Bush Realty Co. v. Whetstone, 266 So. 2d 135, 1972 Miss. LEXIS 1387 (Miss. 1972).

It is a general rule that a person who has employed a broker to sell property cannot avoid liability for the commission on the ground that he is unable to complete the transaction because his wife refused to join in the contract for sale or deed, where the broker has found a purchaser ready, willing and able to purchase the property. C. Buck Bush Realty Co. v. Whetstone, 266 So. 2d 135, 1972 Miss. LEXIS 1387 (Miss. 1972).

17. Pleading.

Plea of res judicata setting up fact that in divorce proceeding property was adjudged to belong to wife should not be sustained in subsequent suit by husband to cancel deed of conveyance to property executed by wife alone on ground that property described in deed was homestead as the deed required the signature of husband if property did in fact constitute homestead at time of execution of deed and if husband was then living with wife. Etheridge v. Webb, 204 Miss. 159, 37 So. 2d 168, 1948 Miss. LEXIS 351 (Miss. 1948).

Benefits of statute invalidating trust deed of wife's homestead, unless signed and acknowledged by husband living with wife, need not be affirmatively asserted by husband in unlawful entry and detainer action by purchaser at sale on foreclosure of such deed. Gardner v. Cook, 173 Miss. 244, 158 So. 150, 1934 Miss. LEXIS 389 (Miss. 1934).

18. Limitation of actions.

A mineral deed to homestead which was not signed by the wife of the owner, being void, did not carry with it constructive possession, and therefore the ten years statute of limitations was inapplicable to an action by the husband and wife to cancel the deed brought some 21 years after the conveyance. Travis v. Dantzler, 244 Miss. 360, 141 So. 2d 556, 1962 Miss. LEXIS 455 (Miss. 1962).

Laches is not a defense to a suit to cancel a deed of the husband conveying a tract of land which constituted the spouses' family homestead, provided that the proceedings are instituted within the statutory period. Robbins v. Berry, 213 Miss. 744, 57 So. 2d 576, 1952 Miss. LEXIS 421 (Miss. 1952).

19. Application of doctrine of estoppel.

Conveyance of homestead without spouse's joining in execution of deed is absolutely void, no subsequent action by non-joining spouse cures its invalidity, and where spouse is required or forced to leave homestead on account of other spouse's misconduct, and is absent at time of deed's execution, instrument is likewise invalid; divorce decree based on irreconcilable differences is not proper judgment for purposes of collaterally estopping claim by non-joining spouse. Welborn v. Lowe, 504 So. 2d 205, 1987 Miss. LEXIS 2437 (Miss. 1987).

Under § 89-1-29, a married woman who, in 1940, joined her husband in executing a deed of his separate property, which was their homestead, was not estopped to assert an after-acquired title against the grantee in the deed, where the deed, though reciting that the grantors were husband and wife, did not recite that the property was homestead or the separate property of the husband and did not indicate that her joinder was pro forma or limited to a release of her homestead interest. Hinton on behalf of Hinton v. Hydraulic Pumps, Inc., 437 So. 2d 1007, 1983 Miss. LEXIS 2884 (Miss. 1983).

A husband who attempts to convey part of the homestead without his wife's signature is not estopped by his warranty to assert the invalidity of the deed, even after the wife's death. Thompson v. Dyess, 218 Miss. 770, 67 So. 2d 721, 1953 Miss. LEXIS 602 (Miss. 1953).

As to the contention that a deed of trust and foreclosure thereunder were void because the land involved was homestead property, and the mortgagor's wife had not joined in the execution of the deed of trust, stipulations in the deed of trust that the land covered thereby was not part of the mortgagor's homestead was not binding on him, although it was a declaration against interest to be considered by the chancellor in determining whether such land was in fact part of his homestead. Kyle v. Peoples Bank & Trust Co., 186 Miss. 287, 187 So. 534, 1939 Miss. LEXIS 202 (Miss. 1939).

Wife, securing credit and advances on faith of her trust deed, held not estopped to assert invalidity thereof because not signed by husband, living with her on homestead conveyed, as defense to unlawful entry and detainer action by purchaser of land at foreclosure sale. Gardner v. Cook, 173 Miss. 244, 158 So. 150, 1934 Miss. LEXIS 389 (Miss. 1934).

The conveyance of a homestead, or any part of it, by the husband alone being void, a warranty clause does not create an estoppel against him even after the death of his wife. Bollen v. R. G. Lilly & Son, 85 Miss. 344, 37 So. 811, 1904 Miss. LEXIS 112 (Miss. 1904).

A deed by a husband alone purporting to convey to a railroad the right of way over his homestead, being void, is no defense to an action of trespass quare clausum fregit by the husband and wife against the railroad for entering and taking the right of way. Gulf & S. I. R. Co. v. Singleterry, 78 Miss. 772, 29 So. 754, 1900 Miss. LEXIS 171 (Miss. 1900).

RESEARCH REFERENCES

ALR.

Homestead Right of Cotenant as Affecting Partition. 83 A.L.R.6th 605.

Am. Jur.

40 Am. Jur. 2d, Homestead §§ 112 et seq.

13A Am. Jur. Pl & Pr Forms (Rev), Homestead, Forms 41 et seq. (conveyance or encumbrance of homestead where spouse incompetent).

9A Am. Jur. Legal Forms 2d Homestead, §§ 135:41 et seq. (conveyance or encumbrance of homestead).

§ 89-1-31. Repealed.

Repealed by Laws, 1980, ch. 514, § 2, eff from and after July 1, 1980.

§ 89-1-31. [Codes, 1880, § 1260; 1892, § 1985; 1906, § 2161; Hemingway's 1917, § 1836; 1930, § 1780; 1942, § 332; Laws, 1924, ch. 169]

Editor's Notes — Former § 89-1-31 required a husband to join in the conveyance of his wife's homestead.

§ 89-1-33. Effect of word "warrant" in conveyance.

The word "warrant" without restrictive words in a conveyance shall have the effect of embracing all of the five (5) covenants known to common law, to wit: seizin, power to sell, freedom from incumbrance, quiet enjoyment and warranty of title.

HISTORY: Codes, 1880, § 1233; 1892, § 2480; 1906, § 2817; Hemingway's 1917, § 2318; 1930, § 2122; 1942, § 843.

Cross References — Effect of the words "warrant specially," see § 89-1-35.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Rights and remedies upon breach.

1. In general.

In a case in which the father conveyed land by warranty deed to his daughter, reserving unto himself a life estate, but he attempted to reconvey one acre of the same tract to another person later, the chancellor correctly found that the father had reserved a life estate and that he could have conveyed his reserved life estate, but that reading the conveyance as retaining the right to reconvey title in fee simple was repugnant to the granting clause in the conveyance to his daughter as the father conveyed and warranted the property to his daughter; pursuant to the deed, the daughter acquired ownership of the property upon delivery of the deed; and the father could not subsequently convey to another person property he no longer owned. T&W Homes Etc, LLC v. Crotwell, 235 So. 3d 66, 2017 Miss. LEXIS 338 (Miss. 2017).

Trial court erred in refusing to require the sellers to correct defects in title and convey the property to the buyer because the real estate contract required the sellers to convey by warranty deed and to cure defects, but they ignored their obligations under contract and pursued a better deal with a third party, which constituted a material breach of the contract and of the covenant of good faith and fair dealing. Under Miss. Code Ann. § 89-1-33, the warranty deed, absent other restrictive language, would have the effect of embracing all five covenants known to the common law, which were seizin, power to sell, freedom from encumbrances, quiet enjoyment and warranty of title. Ferrara v. Walters, 919 So. 2d 876, 2005 Miss. LEXIS 609 (Miss. 2005).

The wording of a deed which provided that "we hereby bargain, sell, convey and warrant to the Trustees of Oakgrove Consolidated High School and their successors the following described land. . . " could only connote a conveyance absolute and the grantors' children would not be heard some 50 years later to say that the grantors' intent was something entirely different from what was expressed in the plain and simple legalese in the recorded instrument of conveyance. Garraway v. Yonce, 549 So. 2d 1341, 1989 Miss. LEXIS 453 (Miss. 1989).

Under Mississippi law, a grantor is liable for breach of warranty even though the grantee has notice of an outstanding encumbrance. Mills v. Damson Oil Corp., 686 F.2d 1096, 1982 U.S. App. LEXIS 25678 (5th Cir. Miss. 1982).

Grantors conveying land under warranty deed could reserve timber, though they had only possibility of reverter. Finkbine Lumber Co. v. Saucier, 150 Miss. 446, 116 So. 736, 1928 Miss. LEXIS 140 (Miss. 1928).

Purchaser with warranty deed knowing of outstanding incumbrance could not require vendor to secure release before paying balance of purchase price. Stokely v. Cooper, 150 Miss. 143, 116 So. 538, 1928 Miss. LEXIS 123 (Miss. 1928).

Grantor liable for breach of warranty, though grantee has notice of incumbrance. Sutton v. Cannon, 135 Miss. 368, 100 So. 24, 1924 Miss. LEXIS 45 (Miss. 1924).

"Warrant" in deed, followed by restrictive words, embraces only warranties expressed therein. Staton v. Henry, 130 Miss. 372, 94 So. 237, 1922 Miss. LEXIS 221 (Miss. 1922).

Warranty against incumbrance includes taxes; parol evidence inadmissible to show grantee assumed payment of taxes. Martin v. Partee, 121 Miss. 482, 83 So. 673, 1920 Miss. LEXIS 94 (Miss. 1920).

Deed held to contain warranty against incumbrances. Garner v. Garner, 117 Miss. 694, 78 So. 623, 1918 Miss. LEXIS 213 (Miss. 1918).

The word "warrant" warrants the possession or seisin as well as the title. Allen v. Caffee, 85 Miss. 766, 38 So. 186, 1904 Miss. LEXIS 191 (Miss. 1904).

2. Rights and remedies upon breach.

Chancery court committed reversible error when it denied attorney fees to the purchaser of a warranty timber deed after the chancery court found in favor of the purchaser in a breach of contract action in which it was determined that the seller of the deed did not have legal title to the land. Gordon v. Gordon, 929 So. 2d 981, 2006 Miss. App. LEXIS 395 (Miss. Ct. App. 2006).

A purchaser under a timber warranty deed could recover reasonable attorney fees and other expenses of adjudicating title, not to exceed the price paid for the timber, when the seller breached covenants embraced by the warranty deed and the purchaser was not divested of the timber while adjudicating title. Greenlee v. Mitchell, 607 So. 2d 97, 1992 Miss. LEXIS 483 (Miss. 1992).

If vendor conveys real property by warranty deed and it is subsequently determined that there is defect in chain of title, vendor has breached covenants of seizin and power to sell; in case in which covenantee is not divested of land while adjudicating title, covenantee may be awarded reasonable attorney fees and other expenses of adjudicating title, not to exceed price paid by covenantee when purchasing land. Howard v. Clanton, 481 So. 2d 272, 1985 Miss. LEXIS 2426 (Miss. 1985).

Where defendant grantors warranted that they had title and the title failed, the grantees were not required to hold possession of the property conveyed until adverse possession gave them title. Guerra v. State, 209 So. 2d 627, 1968 Miss. LEXIS 1462 (Miss. 1968).

A contract to convey a merchantable title to land by a general warranty deed implies an obligation to convey a perfect, fee-simple title, and where the seller does not own and cannot convey most of the minerals underlying the land the purchaser's rescission of the contract is justified. Brent v. Corbin, 252 Miss. 464, 173 So. 2d 430, 1965 Miss. LEXIS 1121 (Miss. 1965).

The measure of damages for a partial failure under a covenant of warranty of title to real property is the difference between the value of the tract without the lost portion. Holcomb v. McClure, 211 Miss. 849, 52 So. 2d 922, 1951 Miss. LEXIS 417 (Miss. 1951).

Purchaser's suit against vendor of realty for breach of warranty of title based on reservation of one-half interest in mineral rights by prior owner was not barred by purchaser's resale of realty where he did not convey and warrant to his vendee reserved mineral rights. Meredith v. Pratt, 208 Miss. 412, 44 So. 2d 521, 1950 Miss. LEXIS 257 (Miss. 1950).

Eviction or surrender not essential to suit on warranty by grantee, buying paramount title; such action may be brought in assumpsit or in chancery. Coopwood v. McCandless, 99 Miss. 364, 54 So. 1007, 1911 Miss. LEXIS 214 (Miss. 1911).

Warrantor's liability for breach of warranty is purchase price with interest. Allen v. Miller, 99 Miss. 75, 54 So. 731, 1910 Miss. LEXIS 16 (Miss. 1910).

In order to recover on warranty for amount paid in purchasing paramount title or incumbrance, covenantee must show that such was paramount to title conveyed to him. Allen v. Miller, 99 Miss. 75, 54 So. 731, 1910 Miss. LEXIS 16 (Miss. 1910).

A grantee in a general warranty deed who purchases land after the taxes of the current year have become a charge thereon may, after the 15th of December, pay the taxes thereon not previously paid by the grantor and at once sue for and recover the sum paid to protect the title. Swinney v. Cockrell, 86 Miss. 318, 38 So. 353, 1905 Miss. LEXIS 43 (Miss. 1905).

RESEARCH REFERENCES

ALR.

Breach of covenant for quiet enjoyment in lease. 41 A.L.R.2d 1414.

Am. Jur.

20 Am. Jur. 2d, Covenants, Conditions, and Restrictions §§ 45 et seq.

7A Am. Jur. Pl & Pr Forms (Rev), Covenants, Conditions, and Restrictions, Forms 1 et seq. (covenants of title).

CJS.

21 C.J.S., Covenants §§ 45 et seq.

§ 89-1-35. Effect of words "warrant specially."

The words "warrant specially," in a conveyance, shall constitute a covenant that the grantor, his heirs and personal representatives, will forever warrant and defend the title of the property unto the grantee and his heirs, representatives, and assigns, against the claims of all persons claiming by, through, or under the grantor.

HISTORY: Codes, 1880, § 1234; 1892, § 2481; 1906, § 2818; Hemingway's 1917, § 2319; 1930, § 2123; 1942, § 844.

Cross References — Effect of the word "warrant," see § 89-1-33.

JUDICIAL DECISIONS

1. In general.

Conveyance with special warranty may be grant of fee simple title. Jones v. Metzger, 132 Miss. 247, 96 So. 161, 1923 Miss. LEXIS 39 (Miss. 1923).

Words "warrant specially" is warranty only against those claiming through grantor. Jones v. Metzger, 132 Miss. 247, 96 So. 161, 1923 Miss. LEXIS 39 (Miss. 1923).

RESEARCH REFERENCES

Am. Jur.

20 Am. Jur. 2d, Covenants, Conditions, and Restrictions § 63, 64, 71.

CJS.

21 C.J.S., Covenants §§ 62, 63.

§ 89-1-37. Effect of a conveyance without warranty.

A conveyance without any warranty shall operate to transfer the title and possession of the grantor as a quitclaim and release.

HISTORY: Codes, 1880, § 1235; 1892, § 2482; 1906, § 2819; Hemingway's 1917, § 2320; 1930, § 2124; 1942, § 845.

Cross References — Effect of quitclaim and release, see § 89-1-39.

JUDICIAL DECISIONS

1. In general.

The heirs of an intestate who had conveyed to his wife by quitclaim deed and without any warranty, property then encumbered, and joined with her in obtaining a loan secured upon property standing in her name, are entitled to be subrogated to such encumbrances upon payment out of the intestate's estate of the debts secured. Kellner v. Kellner, 241 Miss. 53, 129 So. 2d 391, 1961 Miss. LEXIS 318 (Miss. 1961).

§ 89-1-39. Effect of quitclaim and release.

A conveyance of quitclaim and release shall be sufficient to pass all the estate or interest the grantor has in the land conveyed, and shall estop the grantor and his heirs from asserting a subsequently acquired adverse title to the lands conveyed.

HISTORY: Codes, 1857, ch. 36, art. 17; 1871, § 2300; 1880, § 1195; 1892, § 2438; 1906, § 2767; Hemingway's 1917, § 2271; 1930, § 2125; 1942, § 846.

JUDICIAL DECISIONS

ANALYSIS

1. Estoppel.
2. Miscellaneous.

1. Estoppel.

Estoppel by deed bars a party from asserting a subsequently acquired title in derogation of his grant. Chevron Oil Co. v. Clark, 291 F. Supp. 552, 1968 U.S. Dist. LEXIS 12565 (S.D. Miss. 1968).

Where at the time of executing a deed quitclaiming all his right, title and interest in and to all minerals in certain described lands, the grantor had no interest therein, and nothing in the quitclaim deed indicated any intention on the grantor's part to convey any interest that he might subsequently acquire, the grantor was not estopped to assert his after-acquired title, and such after-acquired title did not enure to the benefit of the grantee in the quitclaim deed and his successive grantees. McLaurin v. Royalties, Inc., 231 Miss. 240, 95 So. 2d 105, 1957 Miss. LEXIS 510 (Miss. 1957).

The estoppel created by this section [Code 1942, § 846] is coextensive only with the estate, right or interest which the conveyance purports to convey. McLaurin v. Royalties, Inc., 231 Miss. 240, 95 So. 2d 105, 1957 Miss. LEXIS 510 (Miss. 1957).

Grantee in quitclaim deed acquires such title, if any, as may be then vested in grantors, but when grantors have no title when they execute deed and do not afterwards acquire any title, grantee acquires nothing by virtue of this deed and is not estopped to reply upon perfect title acquired by him elsewhere. Perkins v. White, 208 Miss. 157, 43 So. 2d 897, 1950 Miss. LEXIS 237 (Miss. 1950).

The rule that a grantor and all persons in privity with him are estopped from ever afterwards denying that, at the time his deed of conveyance was executed, he was seized of the property which his deed purported to convey, and that mortgages and deeds of trust are within this rule, has been extended by this statute to quitclaim deeds. Meyers v. American Oil Co., 192 Miss. 180, 5 So. 2d 218, 1941 Miss. LEXIS 29 (Miss. 1941), limited, Pettis v. Brown, 203 Miss. 292, 33 So. 2d 809, 1948 Miss. LEXIS 267 (Miss. 1948).

The estoppel is coextensive with the estate, right, or interest which the conveyance purports to pass. McInnis v. Pickett, 65 Miss. 354, 3 So. 660, 1887 Miss. LEXIS 70 (Miss. 1887); Bramlett v. Roberts, 68 Miss. 325, 10 So. 56, 1890 Miss. LEXIS 87 (Miss. 1890); Houston v. National Mut. Bldg. & Loan Ass'n, 80 Miss. 31, 31 So. 540, 1902 Miss. LEXIS 314 (Miss. 1902).

2. Miscellaneous.

Judgment on the pleadings in favor of an assignee was proper because there was no set of facts that a mortgagor could prove that would entitle him to the surplus that resulted from a foreclosure sale since his conveyances divested him of any interests or rights referenced in the deed of trust; the quitclaim deed and prior conveyances divested the mortgagee of his rights and interests in the property because he manifested his intent to transfer all his right, title, and interest in the property. Hinton v. Rolison, 175 So. 3d 1281, 2015 Miss. LEXIS 519 (Miss. 2015).

A quitclaim deed which conveyed a 40-acre tract of land to the grantee but retained one half of all mineral rights for the grantor transferred to the grantee only the surface land where the grantor had previously conveyed an undivided one-half interest in the minerals to a third party. However, where the devisees of the grantor admitted that it had been intended by the grantor that the grantee should have a one-quarter interest in the minerals, the quitclaim deed would be interpreted to have conveyed to the grantee such interest. Rosenbaum v. McCaskey, 386 So. 2d 387, 1980 Miss. LEXIS 2036 (Miss. 1980).

The doctrine of mutual mistake of fact was applicable and quitclaim deeds previously executed were cancelled and set aside where the deeds had been executed under the mistaken belief, shared by all parties, that the prior owner of the property had died intestate, whereas he had in fact died testate. Greer v. Higgins, 338 So. 2d 1233, 1976 Miss. LEXIS 1655 (Miss. 1976).

Where the plaintiff conveyed by quitclaim deed to the defendant an undivided one-half interest in the property which the plaintiff would inherit from the deceased, and at the same time the defendant conveyed to the plaintiff by quitclaim deed an undivided one-half interest of the defendant, and thereafter it was revealed that the decedent had devised and bequeathed all of his property to the plaintiff, the plaintiff became the owner of an undivided three-fourths interest in the estate, including realty and personalty, and the defendant became vested with an undivided one-fourth interest in such estate. Jackson v. Rutledge, 231 So. 2d 803, 1970 Miss. LEXIS 1613 (Miss. 1970).

The heirs of an intestate who had conveyed to his wife by quitclaim deed and without any warranty, property then encumbered, and joined with her in obtaining a loan secured upon property standing in her name, are entitled to be subrogated to such encumbrances upon payment out of the intestate's estate of the debts secured. Kellner v. Kellner, 241 Miss. 53, 129 So. 2d 391, 1961 Miss. LEXIS 318 (Miss. 1961).

Where the mortgagor purchases from the state the land which was sold to the state for the nonpayment of the taxes and not redeemed, his action amounts merely to redemption from the tax sale and inures to the benefit of the mortgagee. Dampier v. Polk, 214 Miss. 65, 58 So. 2d 44, 1952 Miss. LEXIS 445 (Miss. 1952).

Where grantee was fully aware of outstanding interest in the land in question at time of grantor's conveyance of her interest therein by quitclaim deed, grantor's subsequent acquisition of such outstanding interest on behalf of, and as mere conduit of title for, third person did not place at any disadvantage either the grantee or the beneficiaries under his will and such after-acquired title did not inure to their benefit. Crooker v. Hollingsworth, 210 Miss. 636, 46 So. 2d 541, 1950 Miss. LEXIS 355 (Miss. 1950).

When a person attempts to convey title to something that he does not in fact own, and afterwards obtains good title to the property or interest thus conveyed, such subsequent acquisition will automatically inure to benefit of his prior vendees. Perkins v. White, 208 Miss. 157, 43 So. 2d 897, 1950 Miss. LEXIS 237 (Miss. 1950).

Quitclaim deed executed to each other by four devisees of tract of land, each devisee having defeasible fee simple title, by which tract was divided into four parcels and each devisee took possession of his or her allotted parcel, served to separate use and income of divided parcels but could not confer upon respective grantees fee simple title to parcels as division was made subject to, and could not change, terms of will under which devisees took defeasible fee simple title. Crump v. Phelps, 207 Miss. 682, 43 So. 2d 105, 1949 Miss. LEXIS 379 (Miss. 1949).

Release of land from trust deed by beneficiary in favor of purchaser thereof did not amount to a quitclaim deed from such beneficiary, and conveyed no title to the purchaser. A. W. Stevens Lumber Co. v. Hughes, 38 So. 769 (Miss. 1905).

A quitclaim deed is as effectual to convey title as one with general warranty. Chapman v. Sims, 53 Miss. 154, 1876 Miss. LEXIS 50 (Miss. 1876).

RESEARCH REFERENCES

Am. Jur.

23 Am. Jur. 2d, Deeds §§ 245, 246.

7 Am. Jur. Legal Forms 2d, Deeds §§ 87:125 et seq. (Mississippi-statutory warranty deed, statutory special warranty deed, quitclaim deed).

CJS.

26A C.J.S., Deeds § 17.

§ 89-1-41. Effect of words "grant, bargain, sell."

The words "grant, bargain, sell," shall operate as an express covenant to the grantee, his heirs and assigns, that the grantor was seized of an estate, free from incumbrance made or suffered by the grantor, except the rents and services that may be reserved, and also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express word contained in the conveyance; and the grantee, his heirs, executors, administrators, and assigns, may, in any action, assign breaches as if the covenants above mentioned were expressly inserted.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (32); 1857, ch. 36, art. 16;

1871, § 2299; 1880, § 1196; 1892, § 2440; 1906, § 2769; Hemingway's 1917, § 2273; 1930, § 2126; 1942, § 847.

JUDICIAL DECISIONS

1. In general.

The wording of a deed which provided that "we hereby bargain, sell, convey and warrant to the Trustees of Oakgrove Consolidated High School and their successors the following described land. . . " could only connote a conveyance absolute and the grantors' children would not be heard some 50 years later to say that the grantors' intent was something entirely different from what was expressed in the plain and simple legalese in the recorded instrument of conveyance. Garraway v. Yonce, 549 So. 2d 1341, 1989 Miss. LEXIS 453 (Miss. 1989).

Deed purporting to "grant, bargain, sell and convey" to a railroad company, held to convey fee and not a mere easement. Alabama & V. R. Co. v. Mashburn, 235 Miss. 346, 109 So. 2d 533, 1959 Miss. LEXIS 435 (Miss. 1959).

The use of the words, "grant, bargain and sell" in a conveyance does not imply a warranty that the grantor was seized of a fee simple estate, but only of some estate of freehold; That the grantor had only a life estate is not a breach of such implied covenant. Cunningham v. Dillard, 71 Miss. 61, 13 So. 882, 1893 Miss. LEXIS 144 (Miss. 1893).

Such implied covenant cannot be extended by implication because the habendum clause of the deed is "to have and to hold the above described property to the grantee, his heirs and assigns thereafter in fee simple against the claims of any and all persons whatsoever." Cunningham v. Dillard, 71 Miss. 61, 13 So. 882, 1893 Miss. LEXIS 144 (Miss. 1893).

The words "grant, bargain, sell," have no effect as a warranty when the deed contains an express covenant of warranty. Weems v. McCaughan, 15 Miss. 422, 1846 Miss. LEXIS 168 (Miss. 1846).

RESEARCH REFERENCES

ALR.

Breach of covenant for quiet enjoyment in lease. 41 A.L.R.2d 1414.

Am. Jur.

20 Am. Jur. 2d, Covenants, Conditions, and Restrictions, §§ 86 et seq.

23 Am. Jur. 2d, Deeds § 166.

CJS.

21 C.J.S., Covenants §§ 47, 52.

§ 89-1-43. Mortgages and trust estates; trust estates subject to execution.

Estates of any kind holden or possessed in trust for another, shall be subject to the like debts and charges of the person to whose use or for whose benefit they are holden or possessed as they would have been subject to them if the person had owned the like interest in the thing holden or possessed as he may own in the uses or trusts thereof, whether the trusts be fully executed or not. Said estates may be sold under execution at law, so as to pass whatever interest the cestui que trust may have; and, before a sale under a mortgage or deed of trust, the mortgagor or grantor shall be deemed the owner of the legal title of the property conveyed in such mortgage or deed of trust, except as against the mortgagee and his assigns, or the trustee after breach of the condition of such mortgage or deed of trust.

HISTORY: Codes, 1857, ch. 36, art. 12; 1871, § 2295; 1880, § 1204; 1892, § 2449; 1906, § 2779; Hemingway's 1917, § 2283; 1930, § 2128; 1942, § 849.

Cross References — Conveyance of land sold under execution, see §§ 13-3-187, 13-3-189.

Notice to creditors of estate, see §§ 91-7-145, 91-7-147.

Criminal offense of removing property subject to lien either from the premises, or out of the county, or out of the state, see §§ 97-17-73 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Assignment.
3. Interests subject to execution.
4. Rights of purchaser at execution sale.

1. In general.

Bankruptcy court found that under Miss. Code Ann. § 89-1-43, debtor lost all legal title to debtor's real property once the underlying loan went into default, and debtor had no interest in the real property when debtor later filed for a bankruptcy petition; 11 U.S.C.S. 1322 did not help debtor as the foreclosure sale was conducted in accordance with applicable nonbankruptcy law before the petition was filed. Martin v. USDA Rural Housing Serv (In re Martin), 276 B.R. 552, 2001 Bankr. LEXIS 1902 (Bankr. N.D. Miss. 2001).

Legal title remains with a debtor until default, but the mortgagee has title and the right to possession once a default has occurred. Anderson v. Kimbrough, 741 So. 2d 1041, 1999 Miss. App. LEXIS 454 (Miss. Ct. App. 1999).

If a secured creditor is authorized to foreclose by power of sale, after the debtor's default and upon compliance with the deed of trust or other instrument, the secured creditor may sell any or all of the real estate that is subject to the security interest in its then condition or after any reasonable rehabilitation or preparation for sale. Every aspect of the sale, including the method, advertising, time, place and terms, must be commercially reasonable; this is an objective standard. Wansley v. First Nat'l Bank, 566 So. 2d 1218, 1990 Miss. LEXIS 452 (Miss. 1990).

The failure to appoint an independent trustee for a deed of trust would not invalidate the foreclosure sale of the real property. Wansley v. First Nat'l Bank, 566 So. 2d 1218, 1990 Miss. LEXIS 452 (Miss. 1990).

Where a grantee retains title to land and holds it for the benefit of another in order to secure a loan made by the grantee, the conveyance is a mortgage. The mortgage is evidenced by a deed absolute and the grantee is entitled to retain title until payment of the claim for which it is held for security. La Barre v. Gold, 520 So. 2d 1327, 1987 Miss. LEXIS 2792 (Miss. 1987).

Upon default by a debtor in performance of the conditions of a deed of trust, the trustee is empowered to foreclose pursuant to §§ 89-1-55 and 89-1-43, and, if the statutory requirements are observed, a sale under the power is a perfect foreclosure; the trustee's deed is a conveyance as absolute as if the trustee held title in fee simple, and it cuts off the equity of redemption and any other rights in and to the property, all of which are transferred to the foreclosure sale proceeds, with the sole exception of rights perfected prior to the filing of the deed of trust under which the foreclosure sale is held. Peoples Bank & Trust Co. etc. v. L & T Developers, Inc., 434 So. 2d 699, 1983 Miss. LEXIS 2687 (Miss. 1983).

A mortgagee in possession of property as the result of a foreclosure of a deed of trust could not be dispossessed until the indebtedness owing it had been paid or until a different party had acquired the land under a valid foreclosure sale. James v. Jackson Production Credit Asso., 389 So. 2d 494, 1980 Miss. LEXIS 2095 (Miss. 1980).

Possession of land by owner and mortgagor, or his grantees, during life of deed of trust, cannot form basis of claim to adverse possession by him, since mortgagor has right to retain possession of property until foreclosure sale under deed of trust. Duncan v. Mars, 44 So. 2d 529 (Miss. 1950).

Deed conveying described land to named trustees and their successors so long as land is used for school purposes does not declare or create trust in lands, but conveys estate in fee simple defeasible. Kelly v. Wilson, 204 Miss. 56, 36 So. 2d 817, 1948 Miss. LEXIS 342 (Miss. 1948).

A garageman surrendering possession of a repaired truck to its owner did not thereby lose his lien as against the holder of a deed of trust embracing the truck where there had been no breach of condition or foreclosure of the deed of trust. Watson v. Broadhead, 203 Miss. 142, 33 So. 2d 302, 1948 Miss. LEXIS 241 (Miss. 1948).

After condition broken, the heirs of the grantor in a deed of trust did not have right of possession, with title passed on default to the trustee, as against either the trustee or the purchaser who succeeded to the rights of the mortgagee in possession at a void foreclosure sale, until the indebtedness was tendered or paid; and without such right of possession, essential to tenancy in common, a partition suit could not be maintained by such heirs. Wirtz v. Gordon, 187 Miss. 866, 184 So. 798, 1938 Miss. LEXIS 321 (Miss. 1938).

As against the mortgagor and the devisees under the will of the grantor in a deed of trust, the legal title of the land secured by such deed of trust passed to the trustee under this section [Code 1942, § 849] at the time of default. Wirtz v. Gordon, 187 Miss. 866, 184 So. 798, 1938 Miss. LEXIS 321 (Miss. 1938).

Mortgagee as owner of debt and incidental security may maintain action for injuries to, or conversion of, mortgaged property and apply proceeds of any recovery therefor to discharge of mortgage debt. Love v. Mississippi Cottonseed Products Co., 174 Miss. 697, 159 So. 96, 165 So. 446, 1935 Miss. LEXIS 28 (Miss. 1935).

Title remained in grantor after executing deed of trust, and, on his death, property descended to his heirs. Wright v. Wright, 160 Miss. 235, 134 So. 197, 1931 Miss. LEXIS 202 (Miss. 1931).

Declaration of trust giving trustees control of land previously held by corporations as trustees and earnings therefrom for purpose of disposition of property for benefit of certificate holders held not to violate public policy or anti-trust statutes, where not inimical to public welfare. State ex rel. Knox v. Edward Hines Lumber Co., 150 Miss. 1, 115 So. 598, 1928 Miss. LEXIS 101 (Miss. 1928).

The record of a trust deed conveying land to secure a promissory note, not showing on its face that it is for the purchase money, is not constructive notice of an unrecorded deed, by which the grantor in the trust deed acquired title. Hart v. Gardner, 81 Miss. 650, 33 So. 442, 1902 Miss. LEXIS 183 (Miss. 1902).

A stranger cannot interpose the mortgage as an obstacle against the mortgagor seeking to recover the property or damages for its injury. Illinois C. R. Co. v. Hawkins, 65 Miss. 200, 3 So. 410, 1887 Miss. LEXIS 37 (Miss. 1887).

The statute applies to personal and real estate, and the mortgagor is capable of transmitting the legal estate by descent, devise, or deed, and the legal title in the mortgagee can only be asserted for the purpose of making the security available. Buck v. Payne & Raines, 52 Miss. 271, 1876 Miss. LEXIS 210 (Miss. 1876).

2. Assignment.

Judgment on the pleadings in favor of an assignee was proper because there was no set of facts that a mortgagor could prove that would entitle him to the surplus that resulted from a foreclosure sale since his conveyances divested him of any interests or rights referenced in the deed of trust; the quitclaim deed and prior conveyances divested the mortgagee of his rights and interests in the property because he manifested his intent to transfer all his right, title, and interest in the property. Hinton v. Rolison, 175 So. 3d 1281, 2015 Miss. LEXIS 519 (Miss. 2015).

A bondholder under a deed of trust became an equitable assignee, at least pro tanto of the lien and indebtedness to the extent of his holdings, when he purchased the land in question after foreclosure of the deed of trust, notwithstanding that such sale was void because minor devisees of such land were not served with process in the foreclosure proceedings in the manner required by statute; and he succeeded to the rank of a mortgagee in possession from the date of confirmation of the sale, and with the right to have such indebtedness paid or tendered as a condition precedent to the right of the minor devisees, to enter possession of their claimed interests in such land under partition. Wirtz v. Gordon, 187 Miss. 866, 184 So. 798, 1938 Miss. LEXIS 321 (Miss. 1938).

Mortgagee who assigned mortgage debt and security and did not transfer to assignee previously accrued cause of action for conversion of mortgaged property waived such cause of action, since mortgagee's interest in mortgaged property converted was based upon the mortgage and limited by debt secured and was lost by assignment. Love v. Mississippi Cottonseed Products Co., 174 Miss. 697, 159 So. 96, 165 So. 446, 1935 Miss. LEXIS 28 (Miss. 1935).

Where debt assigned, upon default, title to mortgaged property vests in assignee with right to seize and sell conferred by mortgage. Elder v. Jones, 106 Miss. 489, 64 So. 212, 1913 Miss. LEXIS 159 (Miss. 1913).

Equitable assignment of debt secured by mortgage, not assignment of real estate or interest therein, but carries security as incident thereto. Nestor v. Davis, 100 Miss. 199, 56 So. 347, 1911 Miss. LEXIS 27 (Miss. 1911).

3. Interests subject to execution.

Statute providing that trust estates are subject to claims of beneficiaries' creditors and may be sold under execution at law provides no aid to creditor who proceeds in court of equity, nor can it subject trustee's estate to debts of beneficiary unless beneficiary has equitable estate in property of which trustee has legal title. Sligh v. First Nat'l Bank, 704 So. 2d 1020, 1997 Miss. LEXIS 505 (Miss. 1997).

Holder of deed of trust securing indebtedness may upon default foreclose, notwithstanding prior renewal of secured indebtedness by one other than grantor in deed of trust, absent agreement to contrary. Cochran v. Deposit Guaranty Nat'l Bank, 509 So. 2d 1045, 1987 Miss. LEXIS 2607 (Miss. 1987).

This section [Code 1942, § 849] does not apply to active trust. Stansel v. Hahn, 96 Miss. 616, 50 So. 696, 1910 Miss. LEXIS 148 (Miss. 1910).

The effect of this section [Code 1942, § 849] is to subject to sale under execution at law equitable estates which in the absence of such statute could always be subject in equity. Leigh v. Harrison, 69 Miss. 923, 11 So. 604, 1892 Miss. LEXIS 11 (Miss. 1892).

If creditors proceed in equity the statute does not aid them. Leigh v. Harrison, 69 Miss. 923, 11 So. 604, 1892 Miss. LEXIS 11 (Miss. 1892).

This section [Code 1942, § 849] applies only where there is an equitable estate in the property itself. Where there is an active trust as a mere duty or power in the trustee having the legal title to collect and pay over rents and income to the cestui que trust the statute of uses does not apply. Leigh v. Harrison, 69 Miss. 923, 11 So. 604, 1892 Miss. LEXIS 11 (Miss. 1892).

Personal property cannot be held under execution against the right of the mortgagee after condition broken. Butler v. Lee, 54 Miss. 476, 1877 Miss. LEXIS 29 (Miss. 1877).

The interest of the mortgagee, after condition broken, is not vendible under execution. Buckley v. Daley, 45 Miss. 338, 1871 Miss. LEXIS 81 (Miss. 1871).

The equity of redemption is vendible under execution before sale under the mortgage. Carpenter v. Bowen, 42 Miss. 28, 1868 Miss. LEXIS 32 (Miss. 1868); Byrd v. Clarke, 52 Miss. 623, 1876 Miss. LEXIS 266 (Miss. 1876); Vicksburg & M. R. Co. v. McCutchen, 52 Miss. 645, 1876 Miss. LEXIS 270 (Miss. 1876).

4. Rights of purchaser at execution sale.

One who buys at execution sale land standing in the name of the judgment debtor on the record of deeds acquires title against a prior unrecorded conveyance of which the judgment creditor has no notice. Hart v. Gardner, 81 Miss. 650, 33 So. 442, 1902 Miss. LEXIS 183 (Miss. 1902).

RESEARCH REFERENCES

ALR.

Right of trustee to withhold trust payments from beneficiary to obtain payment of personal debt of latter to him, or to set off such debt against payment to beneficiary. 8 A.L.R.2d 209.

Trustee's power to compromise and settle claims and actions by or against trust estate. 35 A.L.R.2d 967.

Am. Jur.

55 Am. Jur. 2d, Mortgages §§ 8 et seq.

13 Am. Jur. Legal Forms 2d, Mortgages § 179:126 (Mississippi-deed of trust).

CJS.

59 C.J.S., Mortgages §§ 41 et seq.

Law Reviews.

The effect of bankruptcy and encumbrances on mineral interests in Mississippi. 53 Miss. L. J. 551, December, 1983.

§ 89-1-45. Mortgage for purchase money of land.

Every mortgage given at the time of the purchase of real estate to secure the payment of the purchase money, whether such mortgage be given to the seller or to a third-party lender, shall be entitled to a preference over all judgments and other debts of the mortgagor, which preference shall extend only to the land purchased.

HISTORY: Codes, 1857, ch. 36, art. 13; 1871, § 2296; 1880, § 1205; 1892, § 2450; 1906, § 2780; Hemingway's 1917, § 2284; 1930, § 2129; 1942, § 850; Laws, 2000, ch. 341, § 1, eff from and after July 1, 2000.

Cross References — Lien on land sold on credit, see § 11-5-97.
Judgment liens, see §§ 11-7-191 et seq.
Recording of notice of suit affecting real estate, see § 11-47-3.
Redemption by mortgagee of land sold for taxes, see § 27-45-7.
Rights of purchaser at tax sale, see § 27-45-27.
Lien barred on the face of the record, see § 89-5-19.
Sale of personal property to pay purchase money for land, see § 91-7-189.
Purchase-money leases upon decedent's property, see § 91-7-209.

JUDICIAL DECISIONS

1. Reformation of deed.

Chancery court properly granted a bank summary judgment in its action for a declaratory judgment and reformation of its deed of trust to correspond with the corrected description contained in a grantee's deed and thus, allow it to proceed with foreclosure, because due to a scrivener's error, the deed and deed of trust listed the wrong section and county. Williams v. US Bank Trust, N.A., 239 So. 3d 540, 2017 Miss. App. LEXIS 657 (Miss. Ct. App. 2017).

§ 89-1-47. Deed not shown to be mortgage by parol evidence.

A conveyance or other writing absolute on its face, where the maker parts with the possession of the property conveyed by it, shall not be proved, at the instance of any of the parties, by parol evidence, to be a mortgage only, unless fraud in this procurement be the issue to be tried.

HISTORY: Codes, 1880, § 1299; 1892, § 4233; 1906, § 4783; Hemingway's 1917, § 3127; 1930, § 3351; 1942, § 272.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Pleadings.
3. Evidence; burden of proof.
4. Effect of contemporaneously executed writings.

1. In general.

The wording of a deed which provided that "we hereby bargain, sell, convey and warrant to the Trustees of Oakgrove Consolidated High School and their successors the following described land. . . " could only connote a conveyance absolute and the grantors' children would not be heard some 50 years later to say that the grantors' intent was something entirely different from what was expressed in the plain and simple legalese in the recorded instrument of conveyance. Garraway v. Yonce, 549 So. 2d 1341, 1989 Miss. LEXIS 453 (Miss. 1989).

A conveyance by warranty deed of property for $400 which was capable of providing an annual income of $260, without any improvements having been added, and was valued at from $1650 to $2000, was grossly inadequate and was rescinded as constituting a mortgage rather than a sale. Lampley v. Pertuit, 199 So. 2d 452, 1967 Miss. LEXIS 1302 (Miss. 1967).

Under this section [Code 1942, § 272] it may be proved by parol evidence that a deed absolute on its face was procured by fraud and that possession was never parted with so that the instrument was a mortgage. Bethea v. Mullins, 226 Miss. 795, 85 So. 2d 452, 1956 Miss. LEXIS 465 (Miss. 1956).

Where it was shown that the grantor never parted with the possession of land conveyed, parol evidence is competent to show the conveyance to be a mortgage without showing fraud in its procurement. Emmons v. Emmons, 217 Miss. 594, 64 So. 2d 753, 1953 Miss. LEXIS 467 (Miss. 1953).

Before the maker of an absolute deed can offer parol evidence to have it declared to be a mortgage only, he must show either that he had not parted with possession with the land conveyed or that there was fraud in its procurement. Nix v. Nix, 210 Miss. 821, 50 So. 2d 396, 1951 Miss. LEXIS 317 (Miss. 1951).

A quitclaim deed executed by the former owner of tax-forfeited land of a quit-claim deed to the patents issued to him from the state, executed under an alleged agreement of the grantee to reconvey on payment by such former owner of the money expended for the patents, could not be considered a mortgage or security for the money, where the grantee thereunder went into possession by the mandate of the unlawful entry and detainer course, and the grantor was therefore not in a position of a mortgagor in possession. Lewis v. Williams, 186 Miss. 701, 191 So. 479, 1939 Miss. LEXIS 256 (Miss. 1939).

This section [Code 1942, § 272] does not apply to a deed made by the vendors of land to one who paid the purchase price thereof on behalf of another, holding such title as security for the repayment thereof, under a parol agreement to convey it to such other person upon payment of the purchase price, where the real purchaser remained in possession. Tanous v. White, 186 Miss. 556, 191 So. 278, 1939 Miss. LEXIS 243 (Miss. 1939).

Relief to the complainants by way of a conveyance of the land involved was not precluded by this section [Code 1942, § 272] where a money lender paid the purchase price of land on behalf of the complainants who were then lessees in possession thereof, and took title thereof in his own name as security for the purchase price under an oral agreement to convey it to the complainants upon payment of the purchase price. Tanous v. White, 186 Miss. 556, 191 So. 278, 1939 Miss. LEXIS 243 (Miss. 1939).

Where bill seeking to have deed, in connection with contemporaneous written agreement giving option to repurchase, declared to be a mortgage, contained no allegation of fraud, statute barring parol evidence to show that instrument constituted mortgage held applicable. Dixon v. Wright, 175 Miss. 191, 166 So. 374, 1936 Miss. LEXIS 21 (Miss. 1936).

This section [Code 1942, § 272] applies only to tangible property; It does not embrace the transfer of a life insurance policy made during the life of the assured, which may be shown by parol evidence to be a mere security for a debt. Armstrong v. Owens, 83 Miss. 10, 35 So. 320, 1903 Miss. LEXIS 4 (Miss. 1903).

An absolute conveyance cannot be declared a mortgage on the parol evidence of the grantor, who has parted with the possession. Schwartz v. Lieber, 32 So. 954 (Miss. 1902).

Parol evidence to show that a deed absolute in form is not in fact a mortgage is admissible where the grantor has not parted with the possession of the property, or where the issue is one of fraud in the procurement of the deed, although the grantor may have parted with the possession of the property. Culp v. Wooten, 79 Miss. 503, 31 So. 1, 1901 Miss. LEXIS 83 (Miss. 1901).

Where a husband and wife temporarily remove from their homestead and cultivate other lands for a year or two, leaving their children in the occupancy of the homestead, intending themselves all the time to return to it, they have not parted with its possession. Culp v. Wooten, 79 Miss. 503, 31 So. 1, 1901 Miss. LEXIS 83 (Miss. 1901).

This section [Code 1942, § 272] has no application where the debtor was in possession of the grantor's property when the deed was executed and remained in possession. Fultz v. Peterson, 78 Miss. 128, 28 So. 829, 1900 Miss. LEXIS 98 (Miss. 1900).

2. Pleadings.

A bill in equity to have a deed, absolute on its face, adjudged a mortgage, which charges that it was intended by the parties to be a mortgage, is not demurrable for failing to charge that the maker of the deed retained possession, or for failing to show that the agreement evidencing the intent was not in writing. Schwartz v. Lieber, 79 Miss. 257, 30 So. 649, 1901 Miss. LEXIS 49 (Miss. 1901).

3. Evidence; burden of proof.

Deed acted only as debt-securing mortgage and parol evidence concerning deed was admissible to show that it had been intended for security, and not as conveyance, where grantee in deed stated on numerous occasions that deed was debt-securing mortgage, and that grantor owed him, not bank; additionally, deed at issue was one of several transactions where individuals secured loans after executing deeds to same individual who was grantee in instant case, and in those cases upon repayment, individual would reconvey property; there was also testimony that grantor had continued to express ownership interest in property until time of his death, speaking to his children about land and timber. Sweet v. Luster, 513 So. 2d 1240, 1987 Miss. LEXIS 2842 (Miss. 1987).

Notwithstanding the provisions of § 89-1-47, parole evidence could be introduced to prove that a deed, absolute on its face, was intended as a mortgage, where the grantor retained possession of the property. Harris v. Kemp, 451 So. 2d 1362, 1984 Miss. LEXIS 1774 (Miss. 1984).

Chancellor's finding that a deed was in fact a deed of trust given to secure the payment of funds advanced for the purchase price of the land rather than a conveyance was supported by the evidence. Fondren v. State, 199 So. 2d 625, 1967 Miss. LEXIS 1306 (Miss. 1967).

After execution of a deed by a grantor to grantee, the grantee was presumed to be in possession of the undivided one-fourth interest in land which he had purchased by virtue of the deed, and the burden of proof was on those who sought to introduce parol proof to show that the grantor in the deed remained in possession after execution thereof. Conner v. Conner, 238 Miss. 471, 119 So. 2d 240, 1960 Miss. LEXIS 430 (Miss. 1960).

Even if evidence concerning possession of property had shown that a grantor remained in possession of part of land after execution of the deed to grantee, appellants would not have been entitled to have the deed adjudged to be a mortgage where the evidence was insufficient to prove that the deed was intended as a mortgage. Conner v. Conner, 238 Miss.

471, 119 So. 2d 240, 1960 Miss. LEXIS 430 (Miss. 1960).

In a suit to have an absolute deed declared a mortgage, where grantor retained control over the land and the grantee never assumed possession nor exercised any control over the land and in fact did not know the boundaries of the land, there was sufficient proof under this section [Code 1942, § 272] that the instrument was intended as a mortgage. Bethea v. Mullins, 226 Miss. 795, 85 So. 2d 452, 1956 Miss. LEXIS 465 (Miss. 1956).

There is a presumption of possession in a grantee in a warranty deed and that the burden of proof is upon one who seeks to introduce parol proof under this section [Code 1942, § 272] to show that the grantor remained in possession. Bethea v. Mullins, 226 Miss. 795, 85 So. 2d 452, 1956 Miss. LEXIS 465 (Miss. 1956).

Presumption of grantee's possession must be overcome, before deed absolute in form can be declared mortgage. Jordan v. Jordan, 145 Miss. 779, 111 So. 102, 1927 Miss. LEXIS 137 (Miss. 1927).

Evidence held not to overcome presumption of grantee's possession required before declaring deed a mortgage. Jordan v. Jordan, 145 Miss. 779, 111 So. 102, 1927 Miss. LEXIS 137 (Miss. 1927).

Statute held not to prohibit proof that assignment of life policy, absolute in form, is intended as collateral security. Garner v. Townes, 134 Miss. 791, 100 So. 20, 1924 Miss. LEXIS 328 (Miss. 1924).

4. Effect of contemporaneously executed writings.

An unrecorded contemporaneous writing showing a recorded deed absolute in form to be a mortgage is not void; The conveyance being of record, the failure to record the writing showing its real character will not affect the validity of the mortgage. Barkwell v. Swan, 69 Miss. 907, 13 So. 809, 1892 Miss. LEXIS 31 (Miss. 1892).

RESEARCH REFERENCES

ALR.

The parol evidence rule and admissibility of extrinsic evidence to establish or clarify ambiguity in written contract. 40 A.L.R.3d 1384.

Am. Jur.

72 Am. Jur. 2d, Statute of Frauds § 81.

4 Am. Jur. Proof of Facts 2d, Warrant Deed Intended as Mortgage, §§ 6 et seq. (proof that deed was intended as mortgage).

CJS.

37 C.J.S., Frauds, Statute of § 148.

§ 89-1-49. Extinguishment of mortgage; applicability; line of credit.

(1) Except as provided in subsections (2) and (4) of this section, payment of the money secured by any mortgage or deed of trust shall extinguish it, and revest the title in the mortgagor as effectually as if reconveyed.

(2) This section shall have no application to security agreements executed under the Mississippi Uniform Commercial Code nor to security interests created by such security agreements.

(3) As used in this section, the term "line of credit" means any loan, extension of credit or financing arrangement where the lender has agreed to make additional or future advances.

(4) This section shall have no application to a mortgage or deed of trust which states on its face that it secures a line of credit; nor to one which secures a line of credit and, under prior law, was not required to state on its face that it secures a line of credit. Mortgages or deeds of trust not covered by this section shall be extinguished as provided in subsection (5) of Section 89-5-21.

HISTORY: Codes, 1880, § 1207; 1892, § 2452; 1906, § 2782; Hemingway's 1917, § 2286; 1930, § 2152; 1942, § 873; Laws, 1968, ch. 495, § 1; Laws, 1995, ch. 497, § 1; Laws, 1999, ch. 570, § 1; Laws, 2000, ch. 580, § 1, eff from and after passage (approved May 20, 2000).

Cross References — Remedy on mortgage barred when debt is barred, see § 15-1-21.

Limitation of actions on installments notes after foreclosure of mortgage, see § 15-1-23.

Security interests created under the Mississippi Uniform Commercial Code, see §§ 75-9-101 et seq.

Application of partial payments, see § 75-17-9.

Joint and several obligations, see §§ 85-5-1, 85-5-3.

Liens apparently barred on the face of the record, see § 89-5-19.

Entry of satisfaction upon record of mortgage or deed of trust, see § 89-5-21.

JUDICIAL DECISIONS

1. In general.

Bank's mortgage lien against residential property did not have priority over a prior recorded deed of trust against the same property securing a line of credit, since the bank's payment of the outstanding balance on the line of credit did not cancel the line of credit or the deed of trust, and the deed of trust remained in effect when the term of the line of credit was renewed by agreement. U.S. Bank N.A. v. State Bank & Trust Co., 45 F. Supp. 3d 582, 2014 U.S. Dist. LEXIS 95934 (S.D. Miss. 2014).

Although the assignment was absolute on its face, it gave the bank only a qualified interest in the homeowner's property. Since the assignment was given as collateral security for the homeseller's loan, the interest conveyed was commensurate with the debt; hence, when the homeseller paid off his loan to the bank, the bank's interest in the secured property ceased as of that moment, and the bank's interest was reinvested in the homeseller to the same extent as it would have been if an actual reassignment from the bank to the homeseller had been executed. McKinley v. Lamar Bank, 918 So. 2d 689, 2004 Miss. App. LEXIS 709 (Miss. Ct. App. 2004), rev'd, 2005 Miss. LEXIS 611 (Miss. Sept. 22, 2005).

Debtor claiming usury before foreclosure sale put purchaser on notice of his claim and was entitled to have sale set aside and title declared vested in him. Hardin v. Grenada Bank, 182 Miss. 689, 180 So. 805, 1938 Miss. LEXIS 157 (Miss. 1938).

In action for death of cattle, where evidence established debt secured by mortgage on cattel was paid, exclusion of mortgage from evidence was not error. Jackson County v. Meaut, 181 Miss. 282, 179 So. 343, 1938 Miss. LEXIS 69 (Miss. 1938).

Mortgage which was retained by mortgagees and not canceled on record after payment of mortgage debt, and letter of mortgagors stating that they wished mortgage to continue in force as collateral security for sum subsequently advanced by mortgagees, constituted "equitable mortgage" enforceable in chancery. Turner v. Givens, 176 Miss. 214, 166 So. 367, 1936 Miss. LEXIS 100 (Miss. 1936).

Payment of debt for which deed of trust had been assigned as collateral security extinguished debt, so that assignee could not foreclose deed of trust. Blacketor v. Cartee, 172 Miss. 889, 161 So. 696, 1935 Miss. LEXIS 188 (Miss. 1935).

Redelivery of deed of trust on homestead, by one of grantors, after payment held not to create enforceable lien for future debt. Jones v. Hyman Mercantile Co., 134 Miss. 275, 98 So. 845, 1924 Miss. LEXIS 268 (Miss. 1924).

Deed of trust or mortgage extinguished by payment. Munn v. Potter, 111 Miss. 180, 71 So. 315, 1916 Miss. LEXIS 264 (Miss. 1916).

Warranty deed given to secure loan, with ticket by grantee evidencing purpose, should be cancelled or reconveyance directed upon payment of loan. Lee v. Wilkinson, 105 Miss. 358, 62 So. 275, 1913 Miss. LEXIS 206 (Miss. 1913).

RESEARCH REFERENCES

ALR.

Construction of provision in real-estate mortgage, land contract, or other security instrument for release of separate parcels of land as payments are made. 41 A.L.R.3d 7.

Am. Jur.

55 Am. Jur. 2d, Mortgages §§ 345 et seq.

CJS.

59 C.J.S., Mortgages §§ 551, 552 et seq.

Law Reviews.

The effect of bankruptcy and encumbrances on mineral interests in Mississippi. 53 Miss. L. J. 551, December, 1983.

§ 89-1-51. Trustee may acknowledge satisfaction.

The trustee in a deed of trust may acknowledge satisfaction of the deed of trust in like manner as the cestui que trust may, and with like effect, but in such case the trustee shall be liable to the cestui que trust for the amount secured by the deed of trust.

HISTORY: Codes, 1880, § 1208; 1892, § 2453; 1906, § 2783; Hemingway's 1917, § 2287; 1930, § 2153; 1942, § 874.

Cross References — Entry of satisfaction upon record, see § 89-5-21.

JUDICIAL DECISIONS

1. In general.

Company acquiring through mesne conveyances realty sold by insane person's guardian after releases thereof by court orders from recorded trust deed, substituted for trust deeds, released of record by trustees, as security for loans of ward's funds to guardian, held without constructive notice of such instruments and hence not liable for balance due ward from guardian, where substituted deed erroneously described property. Pan-American Life Ins. Co. v. Crymes, 169 Miss. 701, 153 So. 803, 1934 Miss. LEXIS 76 (Miss. 1934).

Where trustee in trust deed satisfied trust deed on records and took second trust deed, payable to himself, and assigned latter to secure his individual indebtedness, assignees were charged constructively with notice that second trust deed omitted name of real beneficiary. Eagle Lumber & Supply Co. v. De Weese, 163 Miss. 602, 135 So. 490, 1931 Miss. LEXIS 4 (Miss. 1931).

Title of assignees of second trust deed held dependent upon validity of fraudulent cancellation of first trust deed by trustee. Eagle Lumber & Supply Co. v. De Weese, 163 Miss. 602, 135 So. 490, 1931 Miss. LEXIS 4 (Miss. 1931).

RESEARCH REFERENCES

ALR.

Conflict of laws as to application of statute proscribing or limiting availability of action for deficiency after sale of collateral real estate. 44 A.L.R.3d 922.

§ 89-1-53. Mortgages and deeds of trust on land; to be referred to in deed of conveyance under foreclosure proceedings.

If there shall be a foreclosure and sale under any such mortgage or deed of trust on land, the deed of conveyance made to a purchaser pursuant to a sale thereunder shall recite the names of all parties to and the date of such mortgage or deed of trust, and also the book and page of the record thereof, and if made by a substituted trustee shall also recite the book and page of the record of his substitution and appointment; but the omission of such recitations shall not invalidate the deed of conveyance.

HISTORY: Codes, 1906, § 2811; Hemingway's 1917, § 2312; 1930, § 2162; 1942, § 883.

OPINIONS OF THE ATTORNEY GENERAL

There is no requirement in Section 9-5-131 et seq., which would require a chancery clerk to post foreclosure notices and execute an affidavit stating that the same was posted, nor is there such requirement or authority in Sections 25-7-9, 25-7-11, and 89-1-53 et. seq., however, pursuant to Sections 25-7-33 and 25-7-45, if a clerk chooses to post such notices, he may assess a fee of $ .25 for executing an affidavit stating that the same was posted. Gex, Mar. 14, 2003, A.G. Op. #03-0112.

RESEARCH REFERENCES

ALR.

Necessity of Production of Original Note Involved in Mortgage Foreclosure – Twenty-First Century Cases. 86 A.L.R.6th 411.

Am. Jur.

18 Am. Jur. Pl & Pr Forms (Rev) Mortgages, Form 153.1 (complaint, petition, or declaration-to foreclose mortgage-another form).

§ 89-1-55. How lands sold under mortgages and deeds in trust.

All lands comprising a single tract, and wholly described by the subdivisions of the governmental surveys, sold under mortgages and deeds of trust, shall be sold in the manner provided by Section 111 of the Mississippi Constitution of 1890 for the sale of lands in pursuance of a decree of court, or under execution. All lands sold at public outcry under deeds of trust or other contracts shall be sold in the county in which the land is located, or in the county of the residence of the grantor, or one of the grantors in the trust deed, provided that where the land is situated in two (2) or more counties, the parties may contract for a sale of the whole in any of the counties in which any part of the land lies. Sale of said lands shall be advertised for three (3) consecutive weeks preceding such sale, in a newspaper published in the county, or, if none is so published, in some paper having a general circulation therein, and by posting one notice at the courthouse of the county where the land is situated, for said time, and such notice and advertisement shall disclose the name of the original mortgagor or mortgagors in said deed of trust or other contract. No sale of lands under a deed of trust or mortgage, shall be valid unless such sale shall have been advertised as herein provided for, regardless of any contract to the contrary. An error in the mode of sale such as makes the sale void will not be cured by any statute of limitations, except as to the ten-year statute of adverse possession.

HISTORY: Codes, 1892, § 2443; 1906, § 2772; Hemingway's 1917, § 2276; 1930, § 2167; 1942, § 888; Laws, 1896, ch. 103; Laws, 1908, ch. 180; Laws, 1934, ch. 248.

Cross References — Sale of land in subdivisions, see Miss. Const., Art. 4, § 111.

Injunctions to restrain sale of personal property seized under a deed of trust or mortgage with power of sale, see § 11-13-21.

Limitation of actions concerning land, see § 15-1-7.

Limitation on suits to redeem mortgages, see § 15-1-19.

Reinstatement of loan by savings association prior to foreclosure sale, see § 81-12-169.

For additional notice requirements in mortgage foreclosure procedures that apply to mortgage broker licensees under Section 81-18-1 et seq., see § 81-18-55.

Reference in deed of conveyance under foreclosure proceedings to mortgages and deeds of trust on land, see § 89-1-53.

Method of sale where terms of deed of trust or mortgage are silent, see § 89-1-57.

Suspension of mortgage foreclosure after declared disaster or emergency, see §§ 89-1-303 et seq.

Criminal offense of selling property on which there is lien without informing vendee, see § 97-19-51.

JUDICIAL DECISIONS

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1. In general.

If a secured creditor is authorized to foreclose by power of sale, after the debtor's default and upon compliance with the deed of trust or other instrument, the secured creditor may sell any or all of the real estate that is subject to the security interest in its then condition or after any reasonable rehabilitation or preparation for sale. Every aspect of the sale, including the method, advertising, time, place and terms, must be commercially reasonable; this is an objective standard. Wansley v. First Nat'l Bank, 566 So. 2d 1218, 1990 Miss. LEXIS 452 (Miss. 1990).

Once deed of trust has matured by its own terms, notice of default in monetary payment is not necessary to maker who is charged with knowledge of terms of obligation. Lake Hillsdale Estates, Inc. v. Galloway, 473 So. 2d 461, 1985 Miss. LEXIS 2177 (Miss. 1985).

Upon default by a debtor in performance of the conditions of a deed of trust, the trustee is empowered to foreclose pursuant to §§ 89-1-55 and 89-1-43, and, if the statutory requirements are observed, a sale under the power is a perfect foreclosure; the trustee's deed is a conveyance as absolute as if the trustee held title in fee simple, and it cuts off the equity of redemption and any other rights in and to the property, all of which are transferred to the foreclosure sale proceeds, with the sole exception of rights perfected prior to the filing of the deed of trust under which the foreclosure sale is held. Peoples Bank & Trust Co. etc. v. L & T Developers, Inc., 434 So. 2d 699, 1983 Miss. LEXIS 2687 (Miss. 1983).

This section [Code 1942, § 888] has no application to sales under a decree of foreclosure. Worthy v. Graham, 246 Miss. 358, 149 So. 2d 469, 1963 Miss. LEXIS 449 (Miss. 1963).

Recitals in foreclosure deed raised a presumption of compliance with this section [Code 1942, § 888]. Gardner v. State, 235 Miss. 119, 108 So. 2d 592, 1959 Miss. LEXIS 410 (Miss. 1959).

No equity of redemption exists after a mortgage sale. Dean v. Simpson, 235 Miss. 162, 108 So. 2d 546, 1959 Miss. LEXIS 414 (Miss. 1959).

Trustee has no authority to proceed with foreclosure of deed of trust when mortgagor, pursuant to agreement for reduction in payment, has paid on indebtedness at reduced rate up to time of foreclosure and mortgagor is not in default or arrears at time of foreclosure. Triplett v. Bridgforth, 205 Miss. 328, 38 So. 2d 756, 1949 Miss. LEXIS 434 (Miss. 1949).

A condition in a trust deed that the trustee foreclose the trust deed pursuant to the request of the holders of the defaulted notes secured does not require that the directors of a bank holding such notes enter a resolution on their minutes requesting foreclosure, and an executive officer of the bank may make such request. Texas Pacific Coal & Oil Co. v. Mulvihill, 200 Miss. 497, 27 So. 2d 719, 1946 Miss. LEXIS 315 (Miss. 1946).

This section [Code 1942, § 888], being in derogation of the common law, must be strictly construed. Cook v. Taylor, 200 Miss. 381, 27 So. 2d 404, 1946 Miss. LEXIS 301 (Miss. 1946).

Requirements of this section [Code 1942, § 888] may be waived by parties to a deed of trust. Baker v. Connecticut General Life Ins. Co., 196 Miss. 701, 18 So. 2d 438, 1944 Miss. LEXIS 251 (Miss. 1944).

Beneficiary in deed of trust has no estate in the land, but only an interest therein to the extent that he can cause the trustee to sell the land and apply its proceeds to the payment of the secured debt. Baker v. Connecticut General Life Ins. Co., 196 Miss. 701, 18 So. 2d 438, 1944 Miss. LEXIS 251 (Miss. 1944).

Persons foreclosing mortgages by sales should carefully follow conditions in trust deed and pertinent statutes. Wilkinson v. Federal Land Bank, 168 Miss. 645, 150 So. 218, 151 So. 761, 1933 Miss. LEXIS 168 (Miss. 1933).

This section [Code 1942, § 888] is inapplicable to deeds of trust executed before its passage. Davis v. O'Connell, 92 Miss. 348, 47 So. 672, 1908 Miss. LEXIS 258 (Miss. 1908).

2. Validity.

Because a second mortgagee lawfully foreclosed the mortgagor's property under Miss. Code Ann. § 89-1-55 and paid off a primary loan and there was no legal prohibition under Miss. Code Ann. §§ 11-5-101 and 89-1-63 for the mortgagee's affiliate to purchase the property at foreclosure, any rights of the mortgagor in the property were extinguished by the foreclosure sale. Pepper v. Homesales, Inc., 2009 U.S. Dist. LEXIS 16692 (S.D. Miss. Mar. 3, 2009).

Nonjudicial foreclosure of deed of trust constitutes private action authorized by contract and does not come within scope of due process clause of Federal Constitution. Leininger v. Merchants & Farmers Bank, 481 So. 2d 1086, 1986 Miss. LEXIS 2362 (Miss. 1986).

Nonjudicial foreclosure procedure authorized by this section is not per se unconstitutional. United States v. White, 429 F. Supp. 1245, 1977 U.S. Dist. LEXIS 16950 (N.D. Miss. 1977).

3. Construction with other laws.

Debtor was divested of all legal and equitable title in foreclosed property at conclusion of foreclosure sale, and therefore could not avoid sale on ground that Chapter 13 petition was filed before foreclosure deed was delivered to successful bidder at sale or recorded. In re Applewhite, 106 B.R. 468, 1989 Bankr. LEXIS 1908 (Bankr. S.D. Miss. 1989).

Although the district court's application of the Uniform Commercial Code was correct with respect to issues pertaining to the Small Business Administration's auction of chattel pursuant to the guaranty agreement between the SBA and appellants, which provided that the SBA may sell the secured property on default subject only that "such powers to be exercised only to the extent permitted by law", Mississippi real property law, § 89-1-55, governed the propriety of the sale of borrower's leasehold, rather than § 75-9-104(j), which specifically excludes from coverage transfers of real property, including leaseholds. United States v. Irby, 618 F.2d 352, 1980 U.S. App. LEXIS 16919 (5th Cir. Miss. 1980).

As a defense to an action by a successor in title to redeem encumbered land from the holder of a trust deed who had purportedly purchased the encumbered land at an invalid trustee's foreclosure sale, and had taken possession of the land and paid the taxes thereon for 24 years, the holder of the trust deed could rely on either Code 1942, § 711, 10-year statute of adverse possession, or Code 1942, § 718, as a mortgagee in possession after a condition broken, notwithstanding the provision in this section [Code 1942, § 888], that an error in the mode of sale such as makes a sale void would not be cured by any statute of limitations, except after the 10-year statute of adverse possession. Gulfport Farm & Pasture Co. v. Hancock Bank, 232 Miss. 289, 98 So. 2d 862, 1957 Miss. LEXIS 474 (Miss. 1957), cert. denied, 358 U.S. 67, 79 S. Ct. 122, 3 L. Ed. 2d 106, 1958 U.S. LEXIS 178 (U.S. 1958).

A sale under a valid power to foreclose a mortgage lien superior to federal tax liens, which was begun before the institution of a Code 1942, § 7403 proceeding by the government to foreclose its tax lien but completed during the pendency thereof, effectually extinguished the government's tax liens. United States v. Boyd, 246 F.2d 477, 1957 U.S. App. LEXIS 5033 (5th Cir. Miss.), cert. denied, 355 U.S. 889, 78 S. Ct. 261, 2 L. Ed. 2d 188, 1957 U.S. LEXIS 67 (U.S. 1957).

Where deed of trust provides trustee may sell after giving legal notice of time, place and terms of sale, Code 1906, § 2821 does not apply and it is sufficient if he complies with this section [Code 1942, § 888]. Lynchburg Shoe Co. v. Castleman, 116 Miss. 188, 76 So. 878, 1917 Miss. LEXIS 306 (Miss. 1917).

4. Sale in parcels.

When trustee first offers property for sale as whole and bid of mortgagee is received and subsequently, upon objection of mortgagor, trustee offers property by individual lots with less favorable results, trustee has not acted in bad faith or unfairly. Lake Hillsdale Estates, Inc. v. Galloway, 473 So. 2d 461, 1985 Miss. LEXIS 2177 (Miss. 1985).

Where parties in a deed of trust of lands in two different counties specifically contracted that each parcel be sold in a county where each was situated, statute was complied with where notices and advertisements of sale on same day for each parcel were duly posted and published in county where each was situated, without any reference to sale upon a parcel. Lee v. Magnolia Bank, 209 Miss. 804, 48 So. 2d 515, 1950 Miss. LEXIS 446 (Miss. 1950).

Foreclosure sale of three 80-acre tracts of land under deed of trust is not void, although not combining with two contiguous 80-acre tracts the separated 80-acre tract so as to sell the 240 acres as whole, where homestead stood on the 160 acres, which owners used for farming purposes and separated 80-acre tract was detached about quarter or half mile, there was no road connecting them, there was no house on this 80-acre tract and it had been abandoned for farming purpose for many years. Clark v. Sayle, 208 Miss. 559, 45 So. 2d 138, 1950 Miss. LEXIS 274 (Miss. 1950).

This section [Code 1942, § 888] is not violated by offering the land, after foreclosure of trust deed, for sale by forties and then as a whole. Gulf Refining Co. v. Harrison, 201 Miss. 294, 30 So. 2d 44, 1947 Miss. LEXIS 397 (Miss. 1947).

In the sale of three 80-acre tracts, two of the tracts which were contiguous should have been offered together as well as separately; and failure so to do vitiated the sale as to all three tracts. Clark v. Carpenter, 201 Miss. 436, 29 So. 2d 215, 1947 Miss. LEXIS 404 (Miss. 1947).

Lands described in a trust deed other than by subdivisions of governmental surveys do not come within the language of this section [Code 1942, § 888] requiring sale in parcels. Texas Pacific Coal & Oil Co. v. Mulvihill, 200 Miss. 497, 27 So. 2d 719, 1946 Miss. LEXIS 315 (Miss. 1946).

Grantor of trust deed waived requirements of this section [Code 1942, § 888] by inserting provision in deed authorizing trustee to sell the land "in parcel or as a whole, as he may deem best," and by fact that grantor was present at the sale and made no objection to the land not being offered for sale in accordance with such requirements. Baker v. Connecticut General Life Ins. Co., 196 Miss. 701, 18 So. 2d 438, 1944 Miss. LEXIS 251 (Miss. 1944).

Parties may direct foreclosure sales in parcels or in bulk and may waive statutory requirement. Rawlings v. Anderson, 149 Miss. 632, 115 So. 714, 1928 Miss. LEXIS 60 (Miss. 1928).

Trustee under trust deed offering land in 160 acre lots "undescribed" did not comply with statute and sale was void. Rawlings v. Anderson, 149 Miss. 632, 115 So. 714, 1928 Miss. LEXIS 60 (Miss. 1928).

Trust deed directing trustee to sell lands or "sufficiency thereof" to satisfy debt required sale in parcel. Rawlings v. Anderson, 149 Miss. 632, 115 So. 714, 1928 Miss. LEXIS 60 (Miss. 1928).

Plantation held to comprise one single tract although 80 acres was separated from balance about half a mile but connected by public road, and should have been sold as if it lay contiguously. Provine v. Thornton, 92 Miss. 395, 46 So. 950, 1908 Miss. LEXIS 253 (Miss. 1908).

Provision requiring sale of land under trust deed in 160 acre tracts may be waived by parties. Brown v. British American Mortg. Co., 86 Miss. 388, 38 So. 312, 1905 Miss. LEXIS 26 (Miss. 1905).

5. Inadequacy of price.

Sale price of property will not be found to be inadequate upon mortgagor's assertion that market value is release value established for release of single lot upon sale by subdivision developer where release value is not necessarily fair market value of lot and record does not disclose proof of fair market value otherwise. Lake Hillsdale Estates, Inc. v. Galloway, 473 So. 2d 461, 1985 Miss. LEXIS 2177 (Miss. 1985).

A mortgagee, who purchased the mortgaged property at a foreclosure sale, was required to account to the mortgagor for the surplus arising from a sale of the property by the mortgagee within two weeks for two and one-half times the amount bid by the mortgagee at the foreclosure sale. Central Financial Services, Inc. v. Spears, 425 So. 2d 403, 1983 Miss. LEXIS 2348 (Miss. 1983).

Sale of land made by trustee in foreclosing deed of trust for total bid of a little more than 50% of its value will not be set aside for inadequacy of price, if sale is otherwise valid, but inadequacy of price may be taken into consideration along with other inequities in determining whether such sale should be set aside. Triplett v. Bridgforth, 205 Miss. 328, 38 So. 2d 756, 1949 Miss. LEXIS 434 (Miss. 1949).

In determining adequacy of the price paid by a mortgagee at foreclosure sale, the amount of the indebtedness unpaid and barred by the statute of limitations at the time of an action to set the sale aside was taken into consideration. Harris v. Bailey Ave. Park, Inc., 202 Miss. 776, 32 So. 2d 689, 1947 Miss. LEXIS 340 (Miss. 1947).

Sale of land by trustee not set aside merely because price inadequate unless such as to shock conscience. Weyburn v. Watkins, 90 Miss. 728, 44 So. 145, 1907 Miss. LEXIS 111 (Miss. 1907).

6. Notice of sale, in general.

Circuit court properly granted summary judgment to a purchaser at a foreclosure sale and dismissed from the borrower's suit pursuant to the bona fide purchaser defense because the trustee properly followed the statutory posting and publishing requirements, the borrower failed raise a genuine issue for trial where she did not show that notice was not given, that the foreclosure and subsequent sale were wrongful, or to context the purchaser's sworn affidavit stating that he purchased the property for valuable consideration without notice of her alleged claims. Blanchard v. Mize, 186 So. 3d 403, 2016 Miss. App. LEXIS 77 (Miss. Ct. App. 2016).

Because Miss. Code Ann. § 89-1-55 only required the posting and publication of the notice of a foreclosure sale, a bank did not have an obligation to determine who the heirs of a deceased mortgagor were; the decedent's heirs did not open an estate until four months after the foreclosure sale. In re Estate of May v. First Fed. Bank, 32 So. 3d 1227, 2010 Miss. App. LEXIS 110 (Miss. Ct. App. 2010).

To suggest that debtor could avoid a foreclosure sale because notice was addressed to him rather than his conservator was illogical. The conservator's duties required him to open debtor's mail and deal with the contents in an appropriate manner, and, therefore, in this situation, notice to debtor was notice to the conservator; furthermore, the evidence showed that the conservator was living at the property and received correspondence and notices from the creditor and the creditor's attorney. In re Beasley, 2009 Bankr. LEXIS 2353 (Bankr. N.D. Miss. Aug. 20, 2009).

Under §§ 89-1-55, 89-1-57, and 89-1-59, a bank did all that it was required to do when it sent two letters to the debtor stating that it would be forced to foreclose unless it could get a subordination from the holder of a note and deed of trust; no further notice was required in the absence of any such requirement in the agreement between the bank and the debtor. EB, Inc. v. Allen, 722 So. 2d 555, 1998 Miss. LEXIS 506 (Miss. 1998).

Notice of foreclosure sale was not defective under § 89-1-55 for failing to clearly identify debtor-wife as signatory to deed where any doubts as to whether debtor-wife joined with husband in executing deed could be clarified by examining county land records. Morton v. Resolution Trust Corp., 918 F. Supp. 985, 1995 U.S. Dist. LEXIS 20453 (S.D. Miss. 1995).

Where a deed of trust stated the manner in which a sale was to be conducted and notice to be given therefor, and the trustee gave the required notice of the sale of the land under a deed of trust by public notice and by advertisement, the mortgagor of the land, who in addition was given notice by mail of the bank's intent to foreclose, received proper notice, and the sale was valid. Rivervalley Co. v. Deposit Guaranty Nat'l Bank, 331 F. Supp. 698, 1971 U.S. Dist. LEXIS 12606 (N.D. Miss. 1971).

The holder of a secondary deed of trust has no right to notice of foreclosure, or statutory right of redemption, but may only assert an interest prior to foreclosure by paying the amounts due and subsequently engaging in foreclosure for nonpayment of his secondary deed of trust. Crystal v. Duffy, 493 So. 2d 942, 1986 Miss. LEXIS 2574 (Miss. 1986).

The mortgagor of the property or a grantee thereof who has assumed the mortgage indebtedness is entitled to notice of the sale, as owner of property. Morgan v. Linham, 227 Miss. 584, 86 So. 2d 473, 1956 Miss. LEXIS 730 (Miss. 1956).

Notice of trustee's sale published in a newspaper during the first of the three weeks' period of the advertisement, was not insufficient as a matter of law merely because the words "secure the payment of a certain in-" (the "in-" being the first two letters of the word "indebtedness") were printed upside down, where error was discovered and corrected in the remaining notices, and the error did not appear at all in the typewritten notice published at the courthouse. Sly v. Gilliland, 207 Miss. 356, 42 So. 2d 393, 1949 Miss. LEXIS 348 (Miss. 1949).

Notice of trustee's sale containing recital that trustee had been requested to foreclose said property, without mentioning who had made the request, did not render the sale void. Sly v. Gilliland, 207 Miss. 356, 42 So. 2d 393, 1949 Miss. LEXIS 348 (Miss. 1949).

Trustee's signed notation of time and place of posting notice of sale placed at bottom of notice of trustee's sale contained in proof of publication is incompetent evidence, when objected to, to show posting of notice of sale, when proof of publication was not made part of trustee's deed by its terms and recitals. McCoy v. McRae, 204 Miss. 309, 37 So. 2d 353, 1948 Miss. LEXIS 368 (Miss. 1948).

Recitals in trustee's conveyance to purchaser at foreclosure sale as to the manner in which he advertised property for sale overcame prima facie presumption that notice was properly posted and that trustee performed all acts in pais required of him. McCoy v. McRae, 204 Miss. 309, 37 So. 2d 353, 1948 Miss. LEXIS 368 (Miss. 1948).

Where the parties have agreed in the deed of trust as to the notice of sale required and such notice complies with this statute, no other notice is necessary. Harris v. Bailey Ave. Park, Inc., 202 Miss. 776, 32 So. 2d 689, 1947 Miss. LEXIS 340 (Miss. 1947).

Words, "according to law," inserted with pen and ink or by typewriter in printed provision in trust deed providing for sale of the land in event of default "after giving notice of the time, place, and terms of sale, by advertisement posted at least ________ days before the day of sale in three public places in county, immediately after the words "posted at least ________ days" and "in three public places," entirely displaced the printed provision in respect to requirement as to manner of advertising foreclosure sale, so that only such requirements as then provided by law under this section [Code 1942, § 888] were necessary. Pruitt v. Dean, 198 Miss. 71, 21 So. 2d 300, 1945 Miss. LEXIS 169 (Miss. 1945); Pruitt v. Dean, 200 Miss. 167, 26 So. 2d 342, 1946 Miss. LEXIS 278 (Miss. 1946).

Deed made by trustee under trust deed will be prima facie presumed to have been made in compliance with requirements of notice of time, place and terms of sale, unless recitals in the deed show otherwise. Chandler v. Bank of Brooksville, 181 Miss. 529, 178 So. 797, 1938 Miss. LEXIS 94 (Miss. 1938).

Trustee's deed reciting that notice was published "for the length of time required by law" held sufficient in absence of evidence publication was not made weekly. Chandler v. Bank of Brooksville, 181 Miss. 529, 178 So. 797, 1938 Miss. LEXIS 94 (Miss. 1938).

Recitals in trustee's deed; burden on purchaser at foreclosure to show in ejectment posting of notice of sale. Jones v. Frank, 123 Miss. 280, 85 So. 310, 1920 Miss. LEXIS 30 (Miss. 1920).

7. —Time of advertising.

Publication must be made for three weeks next before and immediately preceding day of sale, and where more than one week elapsed between last advertisement and day of sale, sale was void. Planters' Mercantile Co. v. Braxton, 120 Miss. 470, 82 So. 323, 1919 Miss. LEXIS 110 (Miss. 1919).

Notices published October 8, 15, 22 and 29 with sale November 2, and publication July 7, 14, 21 and 28 with sale July 31, were sufficient, less than week elapsing between last notice and day of sale. Lake v. Castleman, 116 Miss. 175, 76 So. 877, 1917 Miss. LEXIS 304 (Miss. 1917).

8. —Duration of advertising.

Attorney testified that he published notice of the foreclosure sale and posted notice at the Leflore County Courthouse in Greenwood, Mississippi, for the prescribed three week period. Through the testimony of its attorney, the creditor demonstrated that it complied with the notice requirements of Miss. Code Ann. § 89-1-55. In re Beasley, 2009 Bankr. LEXIS 2353 (Bankr. N.D. Miss. Aug. 20, 2009).

Where the trustee provided for notice of sale to be published and posted for twenty-one days prior to the sale, and a publication of notice of sale was made on May 19, May 26, June 2, and June 9, 1950 and the notice of sale was posted continuously at the courthouse door May 19th to date of sale both giving notice that the sale would be held on June 12, 1950, this was a compliance with the trust deed and with this section [Code 1942, § 888]. McAllister v. Byrd, 212 Miss. 742, 55 So. 2d 435, 1951 Miss. LEXIS 504 (Miss. 1951).

Any portion of statute, except the part which requires advertisement for three consecutive weeks preceding sale, may be waived by the parties or may be changed by contract of the parties. Lee v. Magnolia Bank, 209 Miss. 804, 48 So. 2d 515, 1950 Miss. LEXIS 446 (Miss. 1950).

Advertisement for three consecutive weeks and sale 7 days after last publication complied with law. Donald v. Commercial Bank of Magee, 132 Miss. 578, 97 So. 12, 1923 Miss. LEXIS 92 (Miss. 1923).

Advertising longer than statute requires does not render sale void. Jones v. Salmon, 128 Miss. 508, 91 So. 199, 1922 Miss. LEXIS 139 (Miss. 1922).

9. —Description of land.

There was no valid sale of a property because the published legal description for the notice of sale did not include the property in question. Accordingly, the circuit court erred in awarding a deficiency judgment in that, because the property had not yet been sold at foreclosure, there was no deficiency. Dorman v. Trustmark Nat'l Bank, 281 So. 3d 1016, 2019 Miss. App. LEXIS 198 (Miss. Ct. App. 2019).

Notice of trustee's sale published in a newspaper and posted at courthouse correctly describing the land to be sold was sufficient notice, notwithstanding reference to deed of trust recorded in county records in which the description was defective because of improper punctuation. Sly v. Gilliland, 207 Miss. 356, 42 So. 2d 393, 1949 Miss. LEXIS 348 (Miss. 1949).

Fact that trustee's deed made pursuant to foreclosure sale purported to convey land not described in deed of trust did not entitle mortgagors to cancelation of trustee's deed, where notice of foreclosure sale correctly described the land in the deed of trust. Pruitt v. Dean, 198 Miss. 71, 21 So. 2d 300, 1945 Miss. LEXIS 169 (Miss. 1945); Pruitt v. Dean, 200 Miss. 167, 26 So. 2d 342, 1946 Miss. LEXIS 278 (Miss. 1946).

Where land is correctly described in notice of foreclosure sale but incorrectly described in trustee's deed made pursuant thereto, the purchaser at the foreclosure sale is entitled to receive at any time a corrected deed from the trustee describing the land conveyed by the deed of trust, offered for sale under the notice, and struck off to the purchaser. Pruitt v. Dean, 198 Miss. 71, 21 So. 2d 300, 1945 Miss. LEXIS 169 (Miss. 1945); Pruitt v. Dean, 200 Miss. 167, 26 So. 2d 342, 1946 Miss. LEXIS 278 (Miss. 1946).

A bill to set aside foreclosures of deeds of trust, in which bill it was alleged that "The said trustee omitted and failed to advertise, sell or convey said West Half of Northwest Quarter of said Section 29, which was part of the security conveyed by said trust deed," was secure against demurrer when supported by an exhibit disclosing that the description of the land in the trust deed and in the posted notice, which description was erroneous, differed from the correct description in the newspaper notice. Pruitt v. Dean, 198 Miss. 71, 21 So. 2d 300, 1945 Miss. LEXIS 169 (Miss. 1945); Pruitt v. Dean, 200 Miss. 167, 26 So. 2d 342, 1946 Miss. LEXIS 278 (Miss. 1946).

10. —Disclosure of name of mortgagor or his successor in title.

Published notice of sale was improper where name of one mortgagor of property did not appear in published notice; requirement that names of all mortgagors be published is strictly construed and omission of name of co-mortgagor invalidates sale. Haygood v. First Nat'l Bank, 517 So. 2d 553, 1987 Miss. LEXIS 2923 (Miss. 1987).

Defect in description of mortgagor guardian of minors in notice of sale under this section [Code 1942, § 888] could not be relied upon to invalidate sale of mortgaged premises, in view of statute (Laws, 1934, ch. 250) providing that all mortgagors of real estate located within the state, who might have the right to set aside any title to such real estate by reason of the neglect of any trustee to insert in any notice of sale of such real estate, the name of the mortgagor, should commence suit within 12 months from the passage of such act, and upon the failure of such mortgagor or other person to commence suit within such time, the right to bring suit and the remedy to enforce such right of action should be deemed thereafter to be completely extinguished. Barbour v. Williams, 196 Miss. 409, 17 So. 2d 604, 1944 Miss. LEXIS 207 (Miss. 1944).

The sale of mortgaged property under a notice setting out the mortgagor's name as B. B. Blakeney, instead of B. Blakeney as the mortgagor signed it in the deed of trust, was void as not being a sufficient compliance with the statute, which requires the identity of the mortgagor to be disclosed by setting out his correct name, notwithstanding that a notice recited the name of the mortgagor's wife who executed the mortgage with him, the date of the mortgage and the fact and place of recording, and a description of the land as set forth in the deed of trust. Blakeney v. Smith, 183 Miss. 151, 183 So. 920, 1938 Miss. LEXIS 227 (Miss. 1938).

Trustee's deed held not void as to subsequent grantee because of failure to name such grantee in notice and advertisement of sale, where grantee did not assume mortgage debt and deed expressly excepted debt from warranty of the instrument. Melchor v. Casey, 173 Miss. 67, 161 So. 692, 1935 Miss. LEXIS 227 (Miss. 1935).

Statute requiring advertisement of foreclosure sale to name mortgagor whose property is advertised is in derogation of common law and must be strictly pursued. Wilkinson v. Federal Land Bank, 168 Miss. 645, 150 So. 218, 151 So. 761, 1933 Miss. LEXIS 168 (Miss. 1933).

"Mortgagor" within statute requiring advertisement of foreclosure sale to name mortgagor includes remote grantee who assumed mortgage debt with mortgagee's consent. Wilkinson v. Federal Land Bank, 168 Miss. 645, 150 So. 218, 151 So. 761, 1933 Miss. LEXIS 168 (Miss. 1933).

Advertisement of foreclosure sale, which failed to name mortgagor in possession who was the last vendee through original mortgagor, rendered sale void, notwithstanding advertisement named original mortgagor. Wilkinson v. Federal Land Bank, 168 Miss. 645, 150 So. 218, 151 So. 761, 1933 Miss. LEXIS 168 (Miss. 1933).

11. —Place of posting notice.

State supreme court held that Miss. Code Ann. § 13-3-31 applied to Miss. Code Ann. § 89-1-55, and reversed the denial of a summary judgment motion filed by bank and trustee as the city where the newspaper was published encompassed two different counties and thus, the newspaper was deemed to be published in both counties under Miss. Code Ann. § 13-3-31(4) for purposes of the publication of foreclosure sale notices. Warren v. Johnston, 908 So. 2d 744, 2005 Miss. LEXIS 488 (Miss. 2005).

That proof of publication of notice of sale on foreclosure of a deed of trust was attached to the trustee's deed does not necessarily imply that notice was not posted at the courthouse door, where the trustee's deed, without reciting details, states that the notice required by law was given. Craft v. Everett, 237 Miss. 360, 115 So. 2d 133, 1959 Miss. LEXIS 479 (Miss. 1959).

Under this section [Code 1942, § 888), notice of sale under deed of trust must be posted at the courthouse door of the county where the land is situated. Clark v. Sayle, 208 Miss. 559, 45 So. 2d 138, 1950 Miss. LEXIS 274 (Miss. 1950).

Requirement of this section [Code 1942, § 888] that notice of sale be posted at the courthouse door is met by the posting of notice on face of stack of pasteboard cartons containing books, about half way down entrance hall of courthouse, in conspicuous place in corridor, not far from door space, where courthouse was being repaired, its doors were down for replacement, and bulletin board, which ordinarily stood nearby, was misplaced, and sheriff and others were using face of stack of cartons for posting of notices. Clark v. Sayle, 208 Miss. 559, 45 So. 2d 138, 1950 Miss. LEXIS 274 (Miss. 1950).

So long as the required notice is posted, there can be no objection to the trustee's posting notices of sale in as many places in the county as he desires. Gulf Refining Co. v. Harrison, 201 Miss. 294, 30 So. 2d 44, 1947 Miss. LEXIS 397 (Miss. 1947).

Although the power of sale in a trust deed covering lands located in two counties provided that notice of foreclosure sale be given in one of the counties, such provision was prohibited by this section [Code 1942, § 888] which requires that the prescribed notice be given in every county wherein the land is located. Cook v. Taylor, 200 Miss. 381, 27 So. 2d 404, 1946 Miss. LEXIS 301 (Miss. 1946).

Notice must be posted at courthouse door of county where land situated both when sale is advertised in newspaper published in county and where advertised in newspaper having general circulation therein. Fauntleroy v. Mardis, 123 Miss. 353, 85 So. 96, 1920 Miss. LEXIS 32 (Miss. 1920).

12. —Effect of failure to post notice.

Where notice of foreclosure sale under a trust deed covering land in different counties was published and posted in only one county and all of the land was sold as an entire tract after offering it for sale in separate lots and parcels, the sale was void, not only as to the land located in the county wherein no notice was given, but in the entirety. Cook v. Taylor, 200 Miss. 381, 27 So. 2d 404, 1946 Miss. LEXIS 301 (Miss. 1946).

Foreclosure sale not advertised by posting at courthouse door is invalid. Fauntleroy v. Mardis, 123 Miss. 353, 85 So. 96, 1920 Miss. LEXIS 32 (Miss. 1920).

13. Time and place of sale.

Notice specifying that the sale would be made at the south door of the courthouse was sufficient in the absence of a south door where there was only a front door and a back door, one of these being a southeast door. Gulf Refining Co. v. Harrison, 201 Miss. 294, 30 So. 2d 44, 1947 Miss. LEXIS 397 (Miss. 1947).

Trustee's sale under deed of trust and trustee's deed given pursuant to sale held void, where notice of sale posted at courthouse door, as shown by affidavit of posting made part of deed, by mistake named a past date instead of future date as time of sale. Booker v. Federal Land Bank, 175 Miss. 281, 164 So. 877, 1936 Miss. LEXIS 1 (Miss. 1936).

Lapse of twenty-four days between last publication of trustee's sale and date of sale held to render trustee's deed void on its face. Smith v. Deas, 158 Miss. 111, 130 So. 105, 1930 Miss. LEXIS 25 (Miss. 1930).

Sale under deed of trust is void, more than a week elapsing between last publication and day of sale. Crump v. Tucker, 149 Miss. 711, 115 So. 397, 1928 Miss. LEXIS 29 (Miss. 1928).

Sale on day following last day of three weeks' publication authorized; notice may be published a fourth time and sale made within one week thereafter. Maris v. Lindsey, 124 Miss. 742, 87 So. 12, 1920 Miss. LEXIS 544 (Miss. 1920).

Trustee may fix time and place of sale, provided sufficient notice is given and sale is held within hours designated by statute. Davis v. O'Connell, 92 Miss. 348, 47 So. 672, 1908 Miss. LEXIS 258 (Miss. 1908).

Erroneous date at bottom of trustee's notice of sale which properly gives time, terms and place of sale and otherwise complies with trust deed and the law, does not invalidate sale. Weyburn v. Watkins, 90 Miss. 728, 44 So. 145, 1907 Miss. LEXIS 111 (Miss. 1907).

14. Cure of error by lapse of time.

Clause herein providing that an error in the mode of sale such as makes the sale void will not be cured by any statute of limitations, except as to the ten-year statute of adverse possession, does not create a limitation and the legislature is competent to insert it, modify it or repeal it. Barbour v. Williams, 196 Miss. 409, 17 So. 2d 604, 1944 Miss. LEXIS 207 (Miss. 1944).

Statute (Laws, 1934, ch. 250) providing that all mortgagors of real estate located within the state who might have the right to set aside any title to such real estate by reason of the neglect of any trustee to insert it in a notice of sale of such real estate, the name of said mortgagor, should commence suit within 12 months from the passage of such act, and upon the failure of such mortgagor or other person to commence suit within such time, the right to bring such suit, and the remedy to enforce such right of action should be deemed thereafter to be completely extinguished, if applied so as to restrict the application of the general ten-year statute of adverse possession, was not invalid as being an impairment of contract or as class or private legislation, since the right to sue is distinct from the right sought to be enforced and is remedial in character. Barbour v. Williams, 196 Miss. 409, 17 So. 2d 604, 1944 Miss. LEXIS 207 (Miss. 1944).

The statute of limitations will cure an error in the mode of sale. Bradley v. Villere, 66 Miss. 399, 6 So. 208, 1889 Miss. LEXIS 114 (Miss. 1889).

15. Miscellaneous.

The failure to appoint an independent trustee for a deed of trust would not invalidate the foreclosure sale of the real property. Wansley v. First Nat'l Bank, 566 So. 2d 1218, 1990 Miss. LEXIS 452 (Miss. 1990).

Debtor was divested of all legal and equitable title in foreclosed property at conclusion of foreclosure sale, and therefore could not avoid sale on ground that Chapter 13 petition was filed before foreclosure deed was delivered to successful bidder at sale or recorded. In re Applewhite, 106 B.R. 468, 1989 Bankr. LEXIS 1908 (Bankr. S.D. Miss. 1989).

Mortgagee seeking deficiency judgment has burden of proving entitlement under principles of equity; it must first be determined if mortgagee has endeavored to collect indebtedness out of land; then, it must be determined whether value of property satisfies debt of mortgagor or creates surplus. Lake Hillsdale Estates, Inc. v. Galloway, 473 So. 2d 461, 1985 Miss. LEXIS 2177 (Miss. 1985).

The abandonment of property by a corporate mortgagor, its failure to contest occupancy of the property by the purchaser at a trustee's foreclosure sale, and its permitting the purchaser to make improvements on the land without making known its claim, estopped the mortgagor from asserting its claim to the property as against the purchaser and the mortgagee of the purchaser. Rivervalley Co. v. Deposit Guaranty Nat'l Bank, 331 F. Supp. 698, 1971 U.S. Dist. LEXIS 12606 (N.D. Miss. 1971).

A sale under a deed of trust which describes the property as being in township 1, where the county contains a township 1 south and a township 1 north, but no township 1 (the notice of sale similarly describing it) is void. Seal v. Anderson, 235 Miss. 249, 108 So. 2d 864, 1959 Miss. LEXIS 422 (Miss. 1959).

In suit attacking validity of foreclosure sale under deed of trust, burden of proof is on complainant to show invalidity. Clark v. Sayle, 208 Miss. 559, 45 So. 2d 138, 1950 Miss. LEXIS 274 (Miss. 1950).

Undated note secured by deed of trust is not so ambiguous as to require its reformation or foreclosure by proceeding in chancery when note provides that principal is payable in ten equal successive annual installments, the last of which shall fall due on November 1, 1947, as it is plainly apparent from this language that first installment of principal was due November 1, 1938. Triplett v. Bridgforth, 205 Miss. 328, 38 So. 2d 756, 1949 Miss. LEXIS 434 (Miss. 1949).

The fact that a mortgagee may be a director or officer of the corporate mortgagor does not void purchase of the property by him at a foreclosure sale not brought about by his procurement, particularly when he purchases to protect a valid interest previously acquired. Harris v. Bailey Ave. Park, Inc., 202 Miss. 776, 32 So. 2d 689, 1947 Miss. LEXIS 340 (Miss. 1947).

Eleven acres described in a deed of trust as being located on the east side of the SW ¼ of NW ¼ was indefinite when offered for sale as "11 acres in the SW ¼ of the NW ¼ ," but, since the entire SW ¼ of the NW ¼ was later offered for sale, title vested in the purchaser to eleven of the forty acres, the precise eleven acres to be determined between the purchaser and the owner of the remainder of the forty acres, an attorney who conducted the sale. Gulf Refining Co. v. Harrison, 201 Miss. 294, 30 So. 2d 44, 1947 Miss. LEXIS 397 (Miss. 1947).

Interim payments of reasonable income or rental value of property are essential condition to injunction under moratorium statutes to stay foreclosure sale. Commodore Corp. v. Davis, 178 Miss. 376, 172 So. 867, 1937 Miss. LEXIS 203 (Miss. 1937).

Upon tendering amount due and all expenses of attempted foreclosure which was refused, and again tendered with their bill for injunction, and again refused, mortgagors were entitled to injunction against foreclosure sale. Hembree v. Johnson, 119 Miss. 204, 80 So. 554, 1918 Miss. LEXIS 26 (Miss. 1918).

Under bill by purchaser at void sale, for resale of land, in which husband of deceased mortgagor joined, all heirs acquired right and it was error to permit dismissal in vacation. Northern v. Scruggs, 118 Miss. 353, 79 So. 227, 1918 Miss. LEXIS 87 (Miss. 1918).

Provision in trust deed making default in payment of one note causing whole debt to become due and collectible at option of creditor, is valid and not a penalty. Caldwell v. Kimbrough, 91 Miss. 877, 45 So. 7, 1907 Miss. LEXIS 167 (Miss. 1907).

Such provision not waived by mortgagee failing to act at once on request of debtor. Caldwell v. Kimbrough, 91 Miss. 877, 45 So. 7, 1907 Miss. LEXIS 167 (Miss. 1907).

RESEARCH REFERENCES

ALR.

Necessity and sufficiency of notice of sale to mortgagor where a chattel mortgage is sought to be foreclosed without judicial proceedings by sale under power. 30 A.L.R.2d 539.

Validity, construction, and application of provisions entitling mortgagee to increase interest rate on transfer of mortgaged property. 92 A.L.R.3d 822.

Necessity of Production of Original Note Involved in Mortgage Foreclosure – Twenty-First Century Cases. 86 A.L.R.6th 411.

Am. Jur.

55 Am. Jur. 2d, Mortgages §§ 578 et seq.

18 Am. Jur. Pl & Pr Forms (Rev) Mortgages, Form 153.1 (complaint, petition, or declaration-to foreclose mortgage-another form).

CJS.

59 C.J.S., Mortgages §§ 932 et seq.

Law Reviews.

Abbott, Some basic priority problems in a land development project in Mississippi with emphasis upon power of sale foreclosure procedures. 50 Miss. L. J. 665, September 1979.

§ 89-1-57. Deed of trust or mortgage; how sale made when terms not specified.

If a deed of trust or mortgage, with a power of sale, be silent as to the place and terms of sale and mode of advertising, a sale may be made after condition broken, for cash, upon such notice, and at such time and place as is required for sheriff's sale of like property. But all such sales shall be made in the county where the land is located, or in the county of the residence of the grantor or one (1) of the grantors, provided that where the land is situated in two (2) or more counties, the parties may contract for a sale of the whole, or any part thereof, in either county in which a part of the land lies.

HISTORY: Codes, 1880, § 1237; 1892, § 2484; 1906, § 2821; Hemingway's 1917, § 2322; 1930, § 2169; 1942, § 891; Laws, 1896, ch. 109.

Cross References — Suspension of mortgage foreclosure after declared disaster or emergency, see §§ 89-1-303 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Notice.

1. In general.

A deed of trust which provides that in case of default the trustee shall take possession without notice, and, after duly advertising, sell for cash, at public auction at the courthouse door, a sufficiency of the property to make payment, is not silent as to the place and terms of sale and mode of advertising within the meaning of Code 1942, § 891. Gardner v. State, 235 Miss. 119, 108 So. 2d 592, 1959 Miss. LEXIS 410 (Miss. 1959).

This section [Code 1942, § 891] applies only where trust deed does not specify manner of sale. Lynchburg Shoe Co. v. Castleman, 116 Miss. 188, 76 So. 878, 1917 Miss. LEXIS 306 (Miss. 1917).

Under trust deed designating place of sale outside of county, sale was properly made at place designated by this section [Code 1942, § 891]. Polk v. S. S. Dale & Sons, 93 Miss. 664, 47 So. 386, 1908 Miss. LEXIS 130 (Miss. 1908).

Deed of trust held to adopt this section [Code 1942, § 891] as to notice and manner of sale. Melsheimer v. McKnight, 92 Miss. 386, 46 So. 827, 1908 Miss. LEXIS 250 (Miss. 1908).

A trust deed providing for sale for cash at public auction at Jackson, or any suitable place, is not silent within the meaning of this section [Code 1942, § 891]. Williams v. Dreyfus, 79 Miss. 245, 30 So. 633, 1901 Miss. LEXIS 41 (Miss. 1901).

This section [Code 1942, § 891] does not apply where the trustee is vested with discretion to fix the place. Goodman v. Durant Bldg. & Loan Ass'n, 71 Miss. 310, 14 So. 146, 1893 Miss. LEXIS 74 (Miss. 1893).

2. Notice.

Notice of a foreclosure sale was not invalid for incorrectly describing the door of the courthouse where the sale would take place since a potential bidder would have been able to find the sale from the advertised description. Palmer v. Hope Enters. (In re Palmer), 2017 Bankr. LEXIS 1481 (Bankr. S.D. Miss. May 30, 2017).

Under §§ 89-1-55, 89-1-57, and 89-1-59, a bank did all that it was required to do when it sent two letters to the debtor stating that it would be forced to foreclose unless it could get a subordination from the holder of a note and deed of trust; no further notice was required in the absence of any such requirement in the agreement between the bank and the debtor. EB, Inc. v. Allen, 722 So. 2d 555, 1998 Miss. LEXIS 506 (Miss. 1998).

Trustee may fix time and place of sale provided sufficient notice is given and sale held between hours designated by statute. Davis v. O'Connell, 92 Miss. 348, 47 So. 672, 1908 Miss. LEXIS 258 (Miss. 1908).

RESEARCH REFERENCES

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Necessity and sufficiency of notice of sale to mortgagor where chattel mortgage is sought to be foreclosed without judicial proceedings by sale under power. 30 A.L.R.2d 539.

Validity, construction, and application of provisions entitling mortgagee to increase interest rate on transfer of mortgaged property. 92 A.L.R.3d 822.

Am. Jur.

46 Am. Jur. Proof of Facts 2d 695, Intent of Parties to Ambiguous Deed.

Law Reviews.

Abbott, Some basic priority problems in a land development project in Mississippi with emphasis upon power of sale foreclosure procedures. 50 Miss. L. J. 665, September 1979.

§ 89-1-59. Accelerated debt may be reinstated by payment of all default before sale.

Where there is a series of notes or installment payments secured by a deed of trust, mortgage or other lien, and a provision is inserted in such instrument to secure them to the effect that upon a failure to pay any one (1) note or installment, or the interest thereon, or any part thereof, or for failure to pay taxes or insurance premiums on the property described in such instrument and the subject of such lien, that all the debt secured thereby should become due and collectible, and for any such reason the entire indebtedness shall have been put in default or declared due, the debtor, or any interested party, may at any time before a sale be made under the terms and provisions of such instrument, or by virtue of such lien, stop a threatened sale under the powers contained in such instrument or stop any proceeding in any court to enforce such lien by paying the amount of the note or installment then due or past due by its terms, with all accrued costs, attorneys' fees and trustees' fees on the amount actually past due by the terms of such instrument or lien, rather than the amount accelerated, and such taxes or insurance premiums due and not paid, with proper interest thereon, if such should have been paid by any interested party to such instrument. Any such payment or payments shall reinstate, according to the terms of such instrument, the amount so accelerated, the same as if such amount not due by its terms had not been accelerated or put in default.

HISTORY: Codes, 1930, § 2170; 1942, § 892; Laws, 1924, ch. 157; Laws, 1975, ch. 414, eff from and after passage (approved March 25, 1975).

Cross References — Limitations on actions on instalment notes after foreclosure of mortgage, see § 15-1-23.

Construction of term providing option to accelerate at will, see § 75-1-309.

Reinstatement of foreclosures by savings associations, see § 81-12-169.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Notice.
3. Standing.
4. Evidence.
5. Caveat emptor.

1. In general.

Bankruptcy courts have recognized that there are essential differences between a contractual mortgage reinstatement and the statutory cure right afforded by 11 U.S.C.S. § 1322(b)(5) of the Bankruptcy Code; regardless, it was undisputed that debtor never cured the default that precipitated acceleration of the Note and, therefore, never had the statutory right to reinstate the Note. Seaberry v. Cenlar FSB (In re Seaberry), — B.R. —, 2019 Bankr. LEXIS 1189 (Bankr. S.D. Miss. Apr. 12, 2019).

Mortgagee's refusal to accept payment after time provided for in work-out agreement, but before foreclosure proceedings were instituted, constituted misconduct such as warranted denial of mortgagee's request for attorney fees. In re McIntyre, 96 B.R. 65, 1988 Bankr. LEXIS 2313 (Bankr. S.D. Miss. 1988).

The holder of a secondary deed of trust has no right to notice of foreclosure, or statutory right of redemption, but may only assert an interest prior to foreclosure by paying the amounts due and subsequently engaging in foreclosure for nonpayment of his secondary deed of trust. Crystal v. Duffy, 493 So. 2d 942, 1986 Miss. LEXIS 2574 (Miss. 1986).

Debtor's right to redemption of personal property subject to security interest is governed by Uniform Commercial Code (§ 75-9-506), not by § 89-1-59, which applies only to secured installment transactions which are not covered by Code. Dungan v. Dick Moore, Inc., 463 So. 2d 1094, 1985 Miss. LEXIS 1898 (Miss. 1985).

A contract for the purchase and sale of certain real estate was properly cancelled pursuant to findings that defendant purchasers were in arrears in the monthly installments as well as in taxes and insurance premiums, where purchasers did not take advantage of the statutory procedure for reinstatement of accelerated debts. Stabiler v. Webb, 375 So. 2d 980, 1979 Miss. LEXIS 2376 (Miss. 1979).

This section [Code 1942, § 892] gave the purchaser of an automobile under a conditional sales contract the right to reinstate the instalments under the sales contract as written upon payment of the past-due instalments, even if the entire indebtedness had been accelerated or attempted to be accelerated by the then holder of the contract, at any time before a sale of the automobile which had been repossessed when the purchaser defaulted in making payment of instalments. Dearman v. Williams, 235 Miss. 360, 109 So. 2d 316, 1959 Miss. LEXIS 436 (Miss. 1959).

2. Notice.

Under §§ 89-1-55, 89-1-57, and 89-1-59, a bank did all that it was required to do when it sent two letters to the debtor stating that it would be forced to foreclose unless it could get a subordination from the holder of a note and deed of trust; no further notice was required in the absence of any such requirement in the agreement between the bank and the debtor. EB, Inc. v. Allen, 722 So. 2d 555, 1998 Miss. LEXIS 506 (Miss. 1998).

3. Standing.

In a case in which plaintiff alleged that defendants failed and refused to tender to plaintiff a trustee's deed to the subject property and further failed and refused to deliver possession of the subject property to plaintiff, plaintiff had standing to challenge the debtor's alleged failure to cure the default under Miss. Code Ann. § 89-1-59. Hobson v. Chase Home Fin., LLC, 179 So. 3d 1026, 2015 Miss. LEXIS 584 (Miss. 2015).

4. Evidence.

In a case in which plaintiff alleged that defendants failed and refused to tender to plaintiff a trustee's deed to the subject property and further failed and refused to deliver possession of the subject property to plaintiff, summary judgment was rightly granted in favor of defendants because sufficient evidence was presented to the circuit court that defendants had complied with the statutory requirements under Miss. Code Ann. § 89-1-59 in reinstating the delinquent debtor's loan. Hobson v. Chase Home Fin., LLC, 179 So. 3d 1026, 2015 Miss. LEXIS 584 (Miss. 2015).

5. Caveat emptor.

In a case in which plaintiff alleged that defendants failed and refused to tender to plaintiff a trustee's deed to the subject property and further failed and refused to deliver possession of the subject property to plaintiff, the doctrine of caveat emptor barred plaintiff's claims. Hobson v. Chase Home Fin., LLC, 179 So. 3d 1026, 2015 Miss. LEXIS 584 (Miss. 2015).

RESEARCH REFERENCES

ALR.

Failure to keep up insurance as justifying foreclosure under acceleration provision in mortgage or deed of trust. 69 A.L.R.3d 774.

What transfers justify acceleration under "due-on-sale" clause of real estate mortgage. 22 A.L.R.4th 1266.

Sufficiency of tender of payment to effect defaulting vendee's redemption of rights in land purchased. 37 A.L.R.4th 286.

Right of debtor to "de-acceleration" of residential mortgage indebtedness under Chapter 13 of Bankruptcy Code of 1978 (11 USCS § 1322(b)). 67 A.L.R. Fed. 217.

§ 89-1-61. Forms for conveyances.

A conveyance of land may be in the following form, and shall be as effectual to transfer all the right, title, claim, and possession of the person making it as can be done by any sort of conveyance, viz.:

"In consideration of [here state it], I convey and warrant to ________ the land described as [describe it].

"Witness my signature, the ________ day of ________, A. D. ________."

If only a special warranty is intended, add the word "specially" to the word "warrant" in the conveyance.

HISTORY: Codes, 1880, §§ 1231, 1232; 1892, § 2479; 1906, § 2816; Hemingway's 1917, § 2317; 1930, § 2131; 1942, § 852.

Cross References — Form of conveyance at tax sale, see § 27-45-23.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Reservation of rights.

1. In general.

A deed which is defectively acknowledged by reason of the fact that word "delivered" was omitted from acknowledgment is good as between the parties. Kelly v. Wilson, 204 Miss. 56, 36 So. 2d 817, 1948 Miss. LEXIS 342 (Miss. 1948).

An instrument in the form of a deed which provided that the grantors were to retain possession, control and occupancy of the lands during their lifetime and then vest in the purported grantee, "but not until the death of both grantors herein, does the title pass," was testamentary in character and did not meet the requirement of a deed that it must convey some estate effective upon delivery. Coulter v. Carter, 200 Miss. 135, 26 So. 2d 344, 1946 Miss. LEXIS 274 (Miss. 1946).

Instrument conveying in praesenti a remainder held a deed and not a will. Johnson v. Seely, 139 Miss. 60, 103 So. 499, 1925 Miss. LEXIS 111 (Miss. 1925).

If conveyance is sufficiently certain, additional description failing as to accuracy should be rejected as surplusage; on contradiction in description of premises conveyed, mistaken part should be rejected and other allowed to stand. Ladnier v. Cuevas, 138 Miss. 502, 103 So. 217, 1925 Miss. LEXIS 63 (Miss. 1925).

Debtor's suit to reform deed to third party by creditor, to whom debtor had conveyed land by deed intended as mortgage, held not barred by limitation, right of action not accruing until execution of deed to third party. Allison v. Burnham, 136 Miss. 13, 100 So. 518, 1924 Miss. LEXIS 101 (Miss. 1924).

That absolute deed was intended as mortgage may be shown by parol. Allison v. Burnham, 136 Miss. 13, 100 So. 518, 1924 Miss. LEXIS 101 (Miss. 1924).

Covenant held to be for grantor's benefit, so that grantee would not be permitted to make default and to tender back the land and receive payment. Kent v. Stevenson, 127 Miss. 529, 90 So. 241, 1921 Miss. LEXIS 255 (Miss. 1921).

Condition subsequent strictly construed. Kent v. Stevenson, 127 Miss. 529, 90 So. 241, 1921 Miss. LEXIS 255 (Miss. 1921).

Deed accompanied by written agreement on part of grantee to convey to third party on payment of sum of money, third party then being in and remaining in possession, may be shown to be a mortgage. Williams v. Butts, 124 Miss. 661, 87 So. 145, 1920 Miss. LEXIS 553 (Miss. 1920).

Deed conveying 175 acres more or less, by metes and bounds, does not convey 300 acres of accretions attached to original tract before conveyance. Houston Bros. v. Grant, 112 Miss. 465, 73 So. 284, 1916 Miss. LEXIS 130 (Miss. 1916).

Instrument in form of deed "to take effect only after death of the grantor" was testamentary in character and not a deed. Simpson v. McGee, 112 Miss. 344, 73 So. 55, 1916 Miss. LEXIS 117 (Miss. 1916).

Under this section [Code 1942, § 852] the word "warrant" constitutes a warranty of the possession as well as of the title. Allen v. Caffee, 85 Miss. 766, 38 So. 186, 1904 Miss. LEXIS 191 (Miss. 1904).

The words "convey and warrant" are effective "to transfer all the right, title, claim and possession" of the grantor only when an intention to convey a less estate is not expressed in the deed. Hart v. Gardner, 74 Miss. 153, 20 So. 877, 1896 Miss. LEXIS 128 (Miss. 1896).

2. Reservation of rights.

Where a conveyance of land contains a reservation to the grantor of "all minerals," both liquid and solid, that phrase will not be deemed to include sand and gravel in the absence of a specific designation of sand and gravel as being intended to be reserved. Witherspoon v. Campbell, 219 Miss. 640, 69 So. 2d 384, 1954 Miss. LEXIS 373 (Miss. 1954).

Owner of mineral may remove it from land, though other person owns surface but must allow sufficient land to remain to support surface. Moss v. Jourdan, 129 Miss. 598, 92 So. 689, 1922 Miss. LEXIS 76 (Miss. 1922), overruled, Witherspoon v. Campbell, 219 Miss. 640, 69 So. 2d 384, 1954 Miss. LEXIS 373 (Miss. 1954).

Owner of minerals not enjoined from removing it at instance of owner of surface unless injury to surface is irreparable. Moss v. Jourdan, 129 Miss. 598, 92 So. 689, 1922 Miss. LEXIS 76 (Miss. 1922), overruled, Witherspoon v. Campbell, 219 Miss. 640, 69 So. 2d 384, 1954 Miss. LEXIS 373 (Miss. 1954).

Under deed reserving timber with right-of-way for removing it, and providing for removal within 12 months, grantor conveyed land with timber absolutely subject to his right to remove timber within 12 months or same would pass to grantee. Hand v. Fillingame, 92 Miss. 185, 45 So. 569, 1907 Miss. LEXIS 16 (Miss. 1907).

RESEARCH REFERENCES

ALR.

Written matter as controlling printed matter in construction of deed. 37 A.L.R.2d 820.

Specificity of description of premises as affecting enforceability of contract to convey real property-modern cases. 73 A.L.R.4th 135.

Am. Jur.

7 Am. Jur. Legal Forms 2d, Deeds §§ 87:125 et seq. (Mississippi-statutory warranty deed, statutory special warranty deed, quitclaim deed).

38 Am. Jur. Proof of Facts 2d 633, Dedication of Land to Public Use.

§ 89-1-63. Deed of trust or mortgage; power of sale; relationship of trustee to other party to deed of trust; beneficiary may purchase at sale made under power of sale; appointment or substitution of trustee by beneficiary.

(1) A deed of trust or mortgage may be in the form of a conveyance, to the end, before the words "witness my signature," and then as follows, viz.:

"In trust to secure (here state what is secured, and all the necessary provisions).

Witness my signature, the ______ day of ______________, A.D. ______.

______________"

(2) Notwithstanding the form of conveyance, any deed of trust or mortgage which has been made or shall hereafter be made may confer on the trustee or mortgagee and their successors, assignees and agents the power of sale. Furthermore, any person may be appointed and may perform the duties of the trustee in a deed of trust, and such person shall not be disqualified nor shall the acts of such person be invalid because of the relationship of such person to any other party to the deed of trust. The beneficiary of a deed of trust or the mortgagee of a mortgage may purchase at any sale which has been made or shall hereafter be made under a power of sale, and any such sale shall not be invalid because of the relationship of such person to any other party to the deed of trust.

(3) The beneficiary or holder of any deed of trust, including his agents, employees, successors, assigns, attorneys-in-fact or other legal representa-

tives, may appoint a trustee or substitute a trustee, with or without the permission of the mortgagor or mortgagors. The trustee or substitute trustee so appointed may be a natural person, partnership, corporation, limited liability company, professional association or any other legal entity.

HISTORY: Codes, 1892, § 2483; 1906, § 2820; Hemingway's 1917, § 2321; 1930, § 2132; 1942, § 853; Laws, 1990, ch. 489, § 1; Laws, 2007, ch. 383, § 1, eff from and after passage (approved Mar. 15, 2007).

JUDICIAL DECISIONS

1. In general.

Because a second mortgagee lawfully foreclosed the mortgagor's property under Miss. Code Ann. § 89-1-55 and paid off a primary loan and there was no legal prohibition under Miss. Code Ann. §§ 11-5-101 and 89-1-63 for the mortgagee's affiliate to purchase the property at foreclosure, any rights of the mortgagor in the property were extinguished by the foreclosure sale. Pepper v. Homesales, Inc., 2009 U.S. Dist. LEXIS 16692 (S.D. Miss. Mar. 3, 2009).

Miss. Code Ann. § 89-1-63 contains no requirement that the person named as trustee give consent or otherwise have any knowledge of being appointed; the fact that the person did not know that he was the designated trustee was not a sufficient reason to invalidate the deed of trust. Chism v. Southern Mortg. Co. (In re Chism), 2007 Bankr. LEXIS 1365 (Bankr. N.D. Miss. Apr. 24, 2007).

RESEARCH REFERENCES

Am. Jur.

55 Am. Jur. 2d, Mortgages §§ 66 et seq.

13 Am. Jur. Legal Forms 2d, Mortgages and Trust Deeds § 179:453 (foreclosure by action-mortgagee's purchase of property on foreclosure); §§ 179:454 et seq. (power of sale).

CJS.

59 C.J.S., Mortgages §§ 146 et seq.

§ 89-1-65. Sheriff's conveyance.

A conveyance of land sold by a sheriff under execution may be in the following form, and shall be sufficient to convey all of the title of the defendant in the execution, which any conveyance such officer might make would in such case convey; and a conveyance by a constable in like form, the proper changes being made, shall have the like effect in case of sale made by him, viz.:

"By virtue of an execution issued by the clerk of the circuit court of ________ county, on the ________ day of ________, A.D. ________, returnable before said court on the ________ Monday of ________, A.D. ________, to enforce the judgment of said court, rendered on the ________ day of ________, A.D. ________, in favor of ________ against ________, for ________ dollars, and costs, I, as sheriff of ________ county, have this day, according to law, sold the following lands, to wit: [here describe the land]; when ________ became the best bidder therefor at the sum of ________ dollars, and he having paid said sum of money, I now convey said land to him.

"Witness my hand, the ________, A. D. ________

________________ Sheriff."

HISTORY: Codes, 1880, § 1241; 1892, § 2485; 1906, § 2822; Hemingway's 1917, § 2323; 1930, § 2133; 1942, § 854.

Cross References — Operation of chancery court decree as conveyance, see §§ 11-5-85 et seq.

Conveyance of land sold under execution, see §§ 13-3-187, 13-3-189.

Sheriff's conveyances generally, see § 89-1-27.

Indexing of sheriff's conveyance, see § 89-5-35.

RESEARCH REFERENCES

Am. Jur.

47 Am. Jur. 2d, Judicial Sales §§ 1 et seq.

§ 89-1-67. Conveyance by administrator, executor, guardian, master, or commissioner.

A conveyance by an administrator, executor, guardian, master, or commissioner, who may sell land under a decree of court may be in the following form, and shall be effective to convey all that could or would be conveyed in such case by any form of conveyance, viz.:

"By virtue of the authority conferred on me, administrator of the estate of ________, deceased, by the decree of the chancery court of ________ county, rendered on the ________ day of ________ confirming a sale made on the ________ day of ________, in pursuance of a decree of said court rendered on the ________ day of ________, I, as administrator of said estate, in consideration of ________ dollars, convey to ________, the purchaser thereof, the following land, to wit: [here describe the land].

"Witness my signature, the ________ day of ________, A. D. ________

________________"

The description of the character of the maker of the conveyance will vary the form according to the fact. And if a conveyance be made in pursuance of a power conferred by a will, and not by virtue of a decree, the will should be referred to as a source of power, instead of a decree.

HISTORY: Codes, 1880, § 1242; 1892, § 2486; 1906, § 2823; Hemingway's 1917, § 2324; 1930, § 2134; 1942, § 855.

Cross References — Indexing of conveyances by persons acting in an official or representative character, see § 89-5-35.

Sale of land and deeds of conveyance by executors and administrators, see §§ 91-7-221, 91-7-223.

Sale or compromise of claims by executors or administrators, see § 91-7-229.

Sale of real estate by guardian for maintenance and education of ward, see § 93-13-35.

Improvements by guardian of ward's land, or conversion by ward of land into money, see § 93-13-45.

Extension or renewal of encumbrances on estate by guardian, see § 93-13-47.
Sale of land by guardian for interest of ward, see § 93-13-51.

JUDICIAL DECISIONS

1. In general.

As a general rule, in this state a power in a will to sell real estate will not be construed as a power to mortgage. Stokes v. Payne, Kennedy & Co., 58 Miss. 614, 1881 Miss. LEXIS 9 (Miss. 1881).

It is always a question of intention whether or not an instrument be an execution of a power. Yates v. Clark, 56 Miss. 212, 1878 Miss. LEXIS 61 (Miss. 1878).

§ 89-1-69. Prohibition against covenants requiring payment of a fee upon the transfer of real property; exception.

(1) In this section, "property owners' association" means an incorporated or unincorporated association that:

(a) Is designated as the representative of the owners of property in a subdivision;

(b) Has a membership primarily consisting of the owners of the property covered by the dedicatory instrument for the subdivision; and

(c) Manages or regulates the subdivision for the benefit of the owners of property in the subdivision.

(2) A deed restriction or other covenant running with the land applicable to the conveyance of real property that requires a transferee of real property or the transferee's heirs, successors, or assigns to pay a declarant or other person imposing the deed restriction or covenant on the property or a third party designated by a transferor of the property a fee in connection with a future transfer of the property is prohibited. A deed restriction or other covenant running with the land that violates this section or a lien purporting to encumber the land to secure a right under a deed restriction or other covenant running with the land that violates this section is void and unenforceable. For purposes of this section, a conveyance of real property includes a conveyance or other transfer of an interest or estate in real property.

(3) This section does not apply to a deed restriction or other covenant running with the land that requires a fee associated with the conveyance of property in a subdivision that is payable to:

(a) A property owners' association that manages or regulates the subdivision or the association's managing agent if the subdivision contains more than one (1) platted lot and the right to collect a fee in connection with a future transfer of the property is evidenced by a deed restriction or covenant running with the land filed in the public land records;

(b) An entity organized under Section 501(c)(3), Internal Revenue Code of 1986 if the entity has a right to collect a fee in connection with a future transfer of the property evidenced by a deed restriction or covenant running with the land filed in the public land records; or

(c) A governmental entity.

HISTORY: Laws, 2010, ch. 348, § 1; Laws, 2011, ch. 344, § 1, eff from and after July 1, 2011; Laws, 2019, ch. 330, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment, in (3), added "and the right to collect a fee...land filed in the public land records" at the end of (a), and inserted "if the entity has a right...land filed in the public land records" in (b).

Federal Aspects— Section 501(c)(3) of the Internal Revenue Code is codified as 26 USCS § 501(c)(3).

RELIEF FROM INEQUITABLE MORTGAGE FORECLOSURES, EXECUTION SALES AND THE LIKE AFTER DECLARED EMERGENCY OR DISASTER

Sec.	
89-1-301.	Preliminary injunction against foreclosure proceedings; application to dissolve.
89-1-303.	Hearing; determination of carrying charge payments.
89-1-305.	Effect of default; explanation and remedy; revocation of extension on final order of sale due to changed circumstances.
89-1-307.	Reference to master, farm debt adjustment committee or similar agency.
89-1-309.	Suspension of statute of limitations.
89-1-311.	Application to levies and advertisements for sale.
89-1-313.	Auxiliary jurisdiction of court.
89-1-315.	Approval of compromise settlements or compositions of mortgage indebtedness.
89-1-317.	Agreements as to interest or finance charges; right to prepay without penalty.
89-1-319.	Suspension of inconsistent laws; application to renewed or extended mortgages.
89-1-321.	Construction of terms.
89-1-323.	Exclusion of mortgages held by United States and mortgages securing payment of public debts or funds.
89-1-325.	Postponement or extension shall not substantially diminish value of contract or obligation.
89-1-327.	Provisions are severable.
89-1-329.	Expiration of relief.

§ 89-1-301. Preliminary injunction against foreclosure proceedings; application to dissolve.

The provisions of Sections 89-1-301 through 89-1-329 shall apply only in the event that the President of the United States has declared that an emergency or major disaster exists in this state and shall apply only to persons or property directly damaged in an enemy attack, or a man-made, technological or natural disaster declared by the governor in which Sections 89-1-301 through 89-1-329 was specifically included as a relief measure for those counties covered by such disaster declaration. The provisions of Sections 89-1-301 through 89-1-329 shall apply to any mortgage or deed of trust on real property executed prior to the date of the disaster declaration by the governor, and to any such instruments executed after the date of the disaster declaration by the governor which renewed or extended any mortgage or deed of trust executed prior to the date of the disaster declaration by the governor. When the mortgagee, or owner, or holder, or trustee, or other person having like power shall hereafter determine to foreclose a mortgage or deed of trust on real estate covered by the provisions of Sections 89-1-301 through 89-1-329, he may proceed by bill in chancery, and in the same manner as in proceedings to foreclose under existing statutes in cases where the mortgage or deed of trust contains no provisions for sale by a trustee or otherwise. Any stipulations in the mortgage or deed of trust as to the manner of foreclosure thereunder shall not preclude proceedings to foreclose any mortgage or deed of trust under the provisions of Sections 89-1-301 through 89-1-329. If any mortgagee, holder, owner, trustee, or other person shall attempt to foreclose otherwise than as herein provided, such proceedings may be enjoined by the mortgagor or owner in possessing of the mortgaged premises, or anyone claiming under the mortgagor, or anyone liable for the mortgage debt. Upon the filing of a sworn petition which affirmatively sets forth that neither the petitioner nor any other person owning an interest in the legal title to the mortgaged premises is able to pay the sums in arrears on the mortgaged debt, that no such person or persons have been able to secure a refinancing of the mortgaged debt up to the date of the filing of the petition, after diligent effort, and that because of the destruction of or damage to improvements on the mortgaged premises or because of economic conditions brought about by the effects of such an enemy attack or man-made, technological or natural disaster declared by the governor, the mortgaged property has depreciated in value as a proximate result of said disaster in an amount in excess of fifteen percent (15%) of its fair market value prior to said disaster, the chancellor of any chancery court of competent jurisdiction shall issue a preliminary injunction enjoining any foreclosure proceedings which have been commenced. The chancellor shall likewise issue a preliminary injunction enjoining any foreclosure proceedings which have been commenced if a sworn petition shall be filed which affirmatively sets forth that as a direct and proximate result of said disaster the petitioner or any other person owning an interest in the legal title to the mortgaged premises is unable to pay the sums in arrears on the mortgage debt, that the petitioner or such other person or persons have not been able to secure the refinancing of the mortgage debt up to the date of the filing of the petition after diligent effort, and that the petitioner has actually sustained a loss in income derived from the mortgaged property, or is presently threatened with such loss as a proximate result of such disaster, in an amount in excess of fifteen percent (15%) of the average annual income from the mortgaged property for the three (3) years immediately prior to said disaster; provided, however, for mortgages or deeds of trust on real property leased or rented for residential purposes from the mortgagor to a third party or parties, the provisions of Sections 89-1-301 through 89-1-329 shall apply only if the mortgagor or landlord has made or is making a good-faith effort to rehabilitate the property to a reasonable standard of habitability.

Upon the issuance of any such preliminary injunction, the mortgagee may file a motion to dissolve said injunction, which motion shall be heard in termtime or in vacation, at a time to be fixed by the court not less than thirty (30) days from the date of the filing thereof. The mortgagor may implead any and all persons owning or claiming an interest in the legal title to said property and all persons who may be primarily or secondarily liable on the mortgaged indebtedness. Process shall be issued for all parties so impleaded in the manner now provided by law in suits to confirm titles and the cause shall be triable five (5) days after completion of service of process on all parties. The court may grant such continuances as may be necessary for the completion of service of process on all parties.

Upon the hearing of the motion to dissolve, unless the petitioner shall prove all of the material allegations of his petition by a preponderance of the evidence, the preliminary injunction shall be dissolved. No injunction bond shall be required for the issuance of the preliminary injunction. If the court shall find the petition was filed solely for the purpose of hindering and delaying collection of the mortgaged debt and without reasonable grounds therefor, reasonable attorney's fees shall be allowed as in other cases upon dissolution of preliminary injunctions, but not otherwise.

If, upon hearing of the motion to dissolve, it shall be determined that said motion should not be granted, then the hearing shall continue in the same manner as provided for in Section 89-1-303, and the court shall enter its order granting the relief provided for by Sections 89-1-301 through 89-1-329 in the case of bills to foreclose. All the terms and provisions of Sections 89-1-301 through 89-1-329 relating to the proceedings had on, or to relief granted under, bills to foreclose shall be applicable.

Provided, however, if a deed of trust be foreclosed according to the provisions therein contained, and the sale be actually consummated without the mortgagor or his heirs or assigns availing themselves of the right to enjoin said sale as provided in Sections 89-1-301 through 89-1-329, the foreclosure and the title resting thereon, if otherwise regular, shall not be controverted on account of any of the provisions of Sections 89-1-301 through 89-1-329, and this limitation shall also apply to minors and all others under legal disability. The provisions of this section shall apply to advertisements for sales already published at the time of the disaster declaration by the governor in which he specifically included the relief provided for in Sections 89-1-301 through 89-1-329, but in which the sale has not been made; provided that in such case the costs of the advertisement be tendered in cash with the bill for injunction.

HISTORY: Laws, 1980, ch. 371, § 1, eff from and after passage (approved April 25, 1980).

Cross References — Emergency management law, see §§ 33-15-1 et seq.
Sale of land under mortgage or deed of trust, see §§ 89-1-55, 89-1-57.

JUDICIAL DECISIONS

1. Chancery court.

Creditor was not obligated to bring a foreclosure proceeding in the chancery court because the foreclosure took place four months before Hurricane Katrina and six months before the protections of the Relief from Inequitable Mortgage Foreclosures, Execution Sales, and the Like after Declared Emergency or Disaster Act, Miss. Code Ann. §§ 89-1-301 through 89-1-329 were invoked. Gandy v. Citicorp, 985 So. 2d 371, 2008 Miss. App. LEXIS 360 (Miss. Ct. App. 2008).

RESEARCH REFERENCES

ALR.

Recognition of Action for Damages for Wrongful Foreclosure — Types of Actions. 82 A.L.R.6th 43.

Mortgage foreclosure forbearance statutes-modern status. 83 A.L.R.4th 243.

Validity, Construction, and Application of State Debt Adjusting Statutes. 90 A.L.R.6th 1.

Am. Jur.

13 Am. Jur. Legal Forms 2d, Mortgages § 179:457.1.

§ 89-1-303. Hearing; determination of carrying charge payments.

Suits for the foreclosure of mortgages and deeds of trust shall be deemed ready for final hearing at any time after the expiration of thirty (30) days from the completion of the service of legal process on all parties. On the hearing, the court or chancellor in vacation shall receive evidence tending to establish the reasonable, normal, actual value of the mortgaged property, may fix a minimum price or reasonable and equitable price thereon, and shall determine the reasonable value of the income on said property, if any. If it has no income, then the court or chancellor in vacation shall determine the reasonable rental value, and in lieu of a present order of sale shall direct and require the mortgagor or those interested therein to pay all or a reasonable part of said income or rental value to be used for the payment of taxes, insurance and interest on the mortgage indebtedness, together with a reasonable sum for the upkeep of said property. Said payments shall be made at such times and in such manner as shall be fixed and determined and ordered by the court or chancellor in vacation which, according to the circumstances, may appear just and equitable for a term not to extend beyond two (2) years from the date of the disaster declaration by the governor in which he specifically included the relief provided for in Sections 89-1-301 through 89-1-329. After the expiration of two (2) years from the date of the disaster declaration by the governor in which he specifically included the relief provided for in Sections 89-1-301 through 89-1-329, if any past due principal, interest, taxes and the like have not been paid, a final order for sale may be made.

HISTORY: Laws, 1980, ch. 371, § 2, eff from and after passage (approved April 25, 1980).

RESEARCH REFERENCES

ALR.

Mortgage foreclosure forbearance statutes-modern status. 83 A.L.R.4th 243.

Am. Jur.

13 Am. Jur. Legal Forms 2d, Mortgages and Trust Deeds § 179:282 (waiver of

valuation and appraisement of borrower under trust deed).

§ 89-1-305. Effect of default; explanation and remedy; revocation of extension on final order of sale due to changed circumstances.

If the mortgagor or owner of the mortgaged premises, or other interested person for whose relief Sections 89-1-301 through 89-1-329 are enacted, shall make default in the carrying charge payments, or any of them, required in the order mentioned in the foregoing section, or shall commit any waste, his or her right to a further postponement of a final sale shall terminate thirty (30) days after such default, and the mortgagee or trustee or other persons having the right to foreclose shall thereupon be entitled to apply to the court in termtime or vacation for a final decree of sale upon a satisfactory showing to the court that the default aforesaid has occurred; provided that if the default be explained on the grounds of casualty, inevitable accident, or other good reason wholly beyond the control of the defaulter, and be one which in the judgment of the court can be remedied and made good by the defaulter within a reasonably short period to be fixed by the court, then the court or chancellor in vacation shall have power to excuse the default and to make such order in reference thereto as may be just and equitable. The chancellor shall have power in vacation, at any time after the period mentioned in Section 89-1-303, to hear and determine and to order or decree in respect to any matter that shall arise under Sections 89-1-301 through 89-1-329, to the same extent and as fully as the court could do in termtime, legal notice having been given to all parties of the said hearing in vacation. The court or chancellor in vacation shall have power to revoke the period of extension theretofore granted for the making of the final order of sale in case it may be made to appear to the chancellor in vacation, or to the court in termtime, that the occasion for said postponement no longer exists or is no longer just and reasonable; and, in general, the court, or chancellor in vacation, shall have power to alter and revise its orders theretofore made in any respect insofar as the changed circumstances and conditions may require. Provided further, that prior to two (2) years from the date of the disaster declaration by the governor in which he specifically included the relief provided for in Sections 89-1-301 through 89-1-329, no action shall be maintained in this state for a deficiency judgment until the period of time extension allowed in any proceeding begun under the provisions of Sections 89-1-301 through 89-1-329 shall have expired.

HISTORY: Laws, 1980, ch. 371, § 3, eff from and after passage (approved April 25, 1980).

Cross References — Sale of land under mortgage or deed of trust, see §§ 89-1-55, 89-1-57.

RESEARCH REFERENCES

ALR.

Mortgage foreclosure forbearance statutes-modern status. 83 A.L.R.4th 243.

Am. Jur.

13 Am. Jur. Legal Forms 2d, Mortgages and Trust Deeds §§ 179:262, 179:263 (default provisions; remedies on default); §§ 179:400, 179:400.1 (covenant against waste).

28 Am. Jur. Trials 229, Slander of Title by Improper Recording of Notice of Default.

§ 89-1-307. Reference to master, farm debt adjustment committee or similar agency.

At any hearing, whether in termtime or in vacation, the chancellor shall have power to refer any issue or issues arising under the proceedings authorized by Sections 89-1-301 through 89-1-329 to a master in chancery or to the local farm debt adjustment committee, or any similar federal or state agency, and may prescribe the time within which the master or agency aforesaid shall report. The chancellor shall give consideration to such report with or without exceptions as in his judgment and discretion the same may be entitled.

HISTORY: Laws, 1980, ch. 371, § 4, eff from and after passage (approved April 25, 1980).

§ 89-1-309. Suspension of statute of limitations.

The statutes of limitation which would otherwise apply to any mortgage or mortgage debt, or to any other cause of action under Sections 89-1-301 through 89-1-329, shall cease to run upon the filing of any legal pleadings in the aforesaid court; and the period during which the same be pending in court under Sections 89-1-301 through 89-1-329 shall be added to the period of statutory limitations which would apply to said debt or mortgage or other obligation in which the cause of action arose.

HISTORY: Laws, 1980, ch. 371, § 5, eff from and after passage (approved April 25, 1980).

RESEARCH REFERENCES

ALR.

Mortgage foreclosure forbearance statutes-modern status. 83 A.L.R.4th 243.

§ 89-1-311. Application to levies and advertisements for sale.

The provisions of Sections 89-1-301 through 89-1-329 shall apply to levies and advertisements for sales under executions, including those under deficiency judgments or decrees where the judgment, decree or account sued on existed prior to the date of the disaster declaration by the governor in which he specifically included the relief provided for in Sections 89-1-301 through

89-1-329; and when an advertisement has been made for a sale under any execution, the judgment debtor or any person interested in the real property levied upon may enjoin the sale under execution, whereupon the plaintiff in execution shall proceed to enforce the same by a cross-bill or by original bill in the same manner as if the plaintiff in execution were the holder of a mortgage. When an original bill has been filed in response to a bill of injunction under Sections 89-1-301 through 89-1-329, the causes may be consolidated for the hearing and for all subsequent proceedings, save as to the pleadings and process.

HISTORY: Laws, 1980, ch. 371, § 6, eff from and after passage (approved April 25, 1980).

Cross References — Sale of land under mortgage or deed of trust, see §§ 89-1-55, 89-1-57.

RESEARCH REFERENCES

ALR.
Mortgage foreclosure forbearance statutes-modern status. 83 A.L.R.4th 243.

§ 89-1-313. Auxiliary jurisdiction of court.

The court shall have jurisdiction to postpone the enforcement of judgment by execution sale or to order resale or give relief where such judgment is rendered in an action to collect a debt or obligation secured by a real estate mortgage, the foreclosure of which might be affected under the terms of Sections 89-1-301 through 89-1-329.

HISTORY: Laws, 1980, ch. 371, § 7, eff from and after passage (approved April 25, 1980).

RESEARCH REFERENCES

ALR.
Mortgage foreclosure forbearance statutes-modern status. 83 A.L.R.4th 243.

§ 89-1-315. Approval of compromise settlements or compositions of mortgage indebtedness.

In case the parties to any such foreclosure action shall agree in writing upon terms of compromise settlement thereof, or of composition of the mortgage indebtedness, or both, the court shall have jurisdiction and may by its order confirm and approve such settlement or composition, or both, as the case may be.

HISTORY: Laws, 1980, ch. 371, § 8, eff from and after passage (approved April 25, 1980).

§ 89-1-317. Agreements as to interest or finance charges; right to prepay without penalty.

In any modification or refinancing of a debt secured by a mortgage or deed of trust on real property subject to Sections 89-1-301 through 89-1-329, the borrower and lender may contract and agree that all or any part of the accrued interest or interest to accrue or earned finance charge which has not been paid on the existing debt may be added to the unpaid principal balance thereof, and the borrower may contract for and agree to pay interest on the principal balance as modified as otherwise provided by law; provided, any such borrower shall have the right to prepay the original balance or the modified balance of the debt without penalty.

HISTORY: Laws, 1980, ch. 371, § 9, eff from and after passage (approved April 25, 1980).

RESEARCH REFERENCES

ALR.

Validity and construction of provision of mortgage or other real-estate financing contract prohibiting prepayment for a fixed period of time. 81 A.L.R.4th 423.

§ 89-1-319. Suspension of inconsistent laws; application to renewed or extended mortgages.

Every law and all the provisions thereof now in force insofar as inconsistent with the provisions of Sections 89-1-301 through 89-1-329 are hereby suspended for two (2) years from the date of the disaster declaration by the governor in which he specifically included the relief provided for in Sections 89-1-301 through 89-1-329. No postponement of sale shall be ordered or allowed under Sections 89-1-301 through 89-1-329 which would have the effect of extending the period for redemption beyond two (2) years from the date of the disaster declaration by the governor in which he specifically included the relief provided for in Sections 89-1-301 through 89-1-329.

Sections 89-1-301 through 89-1-329, as to mortgage foreclosure, shall apply only to mortgages made prior to the date of the disaster declaration by the governor in which he specifically included the relief provided for in Sections 89-1-301 through 89-1-329, but shall not apply to mortgages made prior to the date of the disaster declaration by the governor in which he specifically included the relief provided for in Sections 89-1-301 through 89-1-329, which shall hereafter be renewed or extended for: (a) a period ending more than one (1) year after the date of the disaster declaration by the governor in which he specifically included the relief provided for in Sections 89-1-301 through 89-1-329, or (b) which shall be extended by agreement so as to be payable in monthly installments extending over a period of more than three (3) years. During the period of time of postponement granted under the terms of Sections 89-1-301 through 89-1-329 the several statutes of limitation be and they are hereby suspended insofar as any right or obligation may be affected by Sections 89-1-301 through 89-1-329.

HISTORY: Laws, 1980, ch. 371, § 10, eff from and after passage (approved April 25, 1980).

Cross References — Constitutional direction for sale of lands under decree of court, see MS Const Art. 4, § 111.

Sale of realty by court decree, see § 11-5-93.

Procedure for making sales under execution, see §§ 13-3-161 et seq.

Limitation of actions for property sold by order of court, see § 15-1-37.

Conveyances for lands sold under decree of court, see § 89-1-27.

Procedure for selling lands under mortgages and deeds of trust, see § 89-1-55.

§ 89-1-321. Construction of terms.

The words "mortgagor," "mortgagee," "judgment creditor," "judgment debtor" and "purchaser," whenever used in Sections 89-1-301 through 89-1-329, shall be construed to include the plural as well as the singular and also to include their personal representatives, successors and assigns, and the word "mortgage" shall be construed to include deeds of trust and vendors' liens; and for purposes of Sections 89-1-301 through 89-1-329, deeds of trust and any instrument executed as security for an indebtedness shall be treated as a mortgage.

HISTORY: Laws, 1980, ch. 371, § 11, eff from and after passage (approved April 25, 1980).

§ 89-1-323. Exclusion of mortgages held by United States and mortgages securing payment of public debts or funds.

The provisions of Sections 89-1-301 through 89-1-329 shall not apply to any mortgage while such mortgage is held by the United States or agency thereof as security or pledge of the maker, its successors or assigns, nor shall the provisions of Sections 89-1-301 through 89-1-329 apply to any mortgage held as security or pledge to secure payment of a public debt or to secure payment of the deposit of public funds.

HISTORY: Laws, 1980, ch. 371, § 12, eff from and after passage (approved April 25, 1980).

§ 89-1-325. Postponement or extension shall not substantially diminish value of contract or obligation.

No postponement or extension shall be ordered under conditions which, under the temporary emergency, would substantially diminish or impair the value of the contract or obligation of the person against whom the relief is sought without reasonable allowance to justify the exercise of the police power hereby authorized.

HISTORY: Laws, 1980, ch. 371, § 13, eff from and after passage (approved April 25, 1980).

§ 89-1-327. Provisions are severable.

The provisions of Sections 89-1-301 through 89-1-329 are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect, impair or abrogate any of the remaining provisions, but the remaining provisions thereof shall be and remain in full force and effect without regard to that phrase, clause or portion invalidated.

HISTORY: Laws, 1980, ch. 371, § 14, eff from and after passage (approved April 25, 1980).

§ 89-1-329. Expiration of relief.

Except for the cases pending in court, the relief provided for in Sections 89-1-301 through 89-1-329 shall expire two (2) years from the date of any disaster declaration by the governor in which Sections 89-1-301 through 89-1-329 were specifically included as a relief measure for those counties covered by such disaster declaration.

HISTORY: Laws, 1980, ch. 371, § 15, eff from and after passage (approved April 25, 1980).

REAL ESTATE TRANSFER DISCLOSURE REQUIREMENTS

Sec.
89-1-501. Applicability of real estate transfer disclosure requirement provisions.
89-1-503. Delivery of written statement required; indication of compliance; right of transferee to terminate for late delivery.
89-1-505. Limit on duties and liabilities with respect to information required or delivered.
89-1-507. Approximation of certain information required to be disclosed; information subsequently rendered inaccurate.
89-1-509. Form of seller's disclosure statement.
89-1-511. Disclosures to be made in good faith.
89-1-513. Provisions not exhaustive of items to be disclosed.
89-1-515. Amendment of disclosure.
89-1-517. Delivery of disclosure.
89-1-519. Agent; extent of agency.
89-1-521. Delivery of disclosure where more than one agent; inability of delivering broker to obtain disclosure document; notification to transferee of right to disclosure.
89-1-523. Noncompliance with disclosure requirements not to invalidate transfer; liability for actual damages.
89-1-525. Enforcement by Mississippi Real Estate Commission.
89-1-527. Failure to disclose nonmaterial fact regarding property as site of death or felony crime, as site of act or occurrence having no effect on physical condition of property, or as being owned or occupied by persons affected or exposed to certain diseases; failure to disclose information provided or maintained on registration of sex offenders.

§ 89-1-501. Applicability of real estate transfer disclosure requirement provisions.

(1) The provisions of Sections 89-1-501 through 89-1-523 apply only with respect to transfers by sale, exchange, installment land sale contract, lease with an option to purchase, any other option to purchase or ground lease coupled with improvements, of real property on which a dwelling unit is located, or residential stock cooperative improved with or consisting of not less than one (1) nor more than four (4) dwelling units, when the execution of such transfers is by, or with the aid of, a duly licensed real estate broker or salesperson.

(2) There are specifically excluded from the provisions of Sections 89-1-501 through 89-1-523:

(a) Transfers pursuant to court order, including, but not limited to, transfers ordered by a probate court in administration of an estate, transfers pursuant to a writ of execution, transfers by any foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.

(b) Transfers to a mortgagee by a mortgagor or successor in interest who is in default, transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default, transfers by any foreclosure sale after default, in an obligation secured by a mortgage, transfers by a sale under a power of sale or any foreclosure sale under a decree of foreclosure after default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale, or transfers by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the real property by a deed in lieu of foreclosure.

(c) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship or trust.

(d) Transfers from one co-owner to one or more other co-owners.

(e) Transfers made to a spouse, or to a person or persons in the lineal line of consanguinity of one or more of the transferors.

(f) Transfers between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to such a decree.

(g) Transfers or exchanges to or from any governmental entity.

(h) Transfers of real property on which no dwelling is located.

(i) The provisions of Section 89-1-527.

HISTORY: Laws, 1993, ch. 407, § 1; Laws, 1997, ch. 456, § 1; Laws, 2005, ch. 329, § 2, eff from and after July 1, 2005.

JUDICIAL DECISIONS

1. Illustrative cases.

Sellers failed to comply with requirements concerning disclosures by failing to disclose the known repair history or providing responses to the relevant questions on the disclosure form; the presence of an "as-is" clause did not absolve the sellers of their duty to disclose. The sellers were fully aware that the subject parapet wall had issues because they had paid a contractor to repair numerous problems prior to the sale of the home to the buyers, and because of the sellers' failure to disclose, the buyers were damaged. Lewis v. Rula, 293 So. 3d 317, 2020 Miss. App. LEXIS 86 (Miss. Ct. App. 2020).

While Mississippi requires a disclosure statement to accompany the sale of a domicile or house, transfers of real property on which no dwelling is located do not require disclosure statements to be provided to the buyer. Stribling Invs., LLC v. Mike Rozier Constr. Co., 189 So. 3d 1216, 2016 Miss. LEXIS 19 (Miss. 2016).

Where the home seller had submitted two disclosure statements before his death, the first one with a listing agency in which the seller admitted that his home had been treated for termite damages, and the second one with the realtor in which the seller denied that his home had been treated for prior termite damage, summary judgment in favor of a realtor was proper as the home buyers failed to show that the realty possessed any prior knowledge of any problems with the seller's memory or his home which would have triggered a duty to investigate the credibility of the seller's denial of prior termite damage in his disclosure statement. Varnado v. Alfonso Realty, Inc., 16 So. 3d 746, 2009 Miss. App. LEXIS 492 (Miss. Ct. App. 2009).

Summary judgment was appropriate against an action brought by the buyers of a home for failure to make the statutory disclosures required under Miss. Code Ann. §§ 89-1-501 to 523, fraud and related claims where the home was 30 years old, had obvious structural problems, the buyers were made aware of the existence of subterranean termite damage, and a contract addendum indicated that the home was being sold "as is". Laird v. ERA Bayshore Realty, 841 So. 2d 178, 2003 Miss. App. LEXIS 231 (Miss. Ct. App. 2003).

RESEARCH REFERENCES

ALR.

Real-estate broker's power to bind principal by representations as to character, condition, location, quantity, or title of property. 58 A.L.R.2d 10.

Broker's liability for damages or losses sustained by vendor of real property to vendee because of broker's misrepresentations. 61 A.L.R.2d 1237.

Liability of vendor of structure for failure to disclose that it was built on filled ground. 80 A.L.R.2d 1453.

Duty of vendor of real estate to give purchaser information as to termite infestation. 22 A.L.R.3d 972.

Vendor and purchaser: mutual mistake as to physical condition of realty as ground for rescission. 50 A.L.R.3d 1188.

Real estate broker's liability for misrepresentation as to income from or productivity of property. 81 A.L.R.3d 717.

Fraud predicated on vendor's misrepresentation or concealment of danger or possibility of flooding or other unfavorable water conditions. 90 A.L.R.3d 568.

Statutes of limitation: actions by purchasers or contractees against vendors or contractors involving defects in houses or other buildings caused by soil instability. 12 A.L.R.4th 866.

Liability of vendor of existing structure for property damage sustained by purchaser after transfer. 18 A.L.R.4th 1168.

Recovery of punitive damages in action by purchasers of real property charging fraud or misrepresentation. 19 A.L.R.4th 801.

Remedies for fraud or misrepresentation as to heating or cooling cost of realty purchased. 32 A.L.R.4th 828.

Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold. 46 A.L.R.4th 546.

Broker's liability for fraud or misrepresentation concerning development or nondevelopment of nearby property. 71 A.L.R.4th 511.

Am. Jur.

12 Am. Jur. 2d, Brokers §§ 88, 89, 92.

37 Am. Jur. 2d, Fraud and Deceit §§ 169, 218.

77 Am. Jur. 2d, Vendor and Purchaser §§ 278 et seq.

24 Am. Jur. Pl & Pr Forms (Rev), Vendor and Purchaser, Forms 59, 113 et seq. (complaint, petition or declaration-for rescission or for damages for fraud-nondisclosure or particular misrepresentations as to condition of realty).

15C Am. Jur. Legal Forms 2d, Real Estate Sales , Forms 1 et seq.

12 Am. Jur. Proof of Facts 2d 103, Vendor's Failure to Warn Purchaser of Dangerous Location of Property.

16 Am. Jur. Proof of Facts 2d 719, Real Estate Broker's Misrepresentation of Condition or Value of Realty.

38 Am. Jur. Proof of Facts 2d 91, Fraudulent Misrepresentation as to Use to Which Real Property Could Be Put.

CJS.

12 C.J.S., Brokers §§ 165, 166.

92 C.J.S., Vendor and Purchaser §§ 106-110.

§ 89-1-503. Delivery of written statement required; indication of compliance; right of transferee to terminate for late delivery.

The transferor of any real property subject to Sections 89-1-501 through 89-1-523 shall deliver to the prospective transferee the written property condition disclosure statement required by Sections 89-1-501 through 89-1-523, as follows:

(a) In the case of a sale, as soon as practicable before transfer of title.

(b) In the case of transfer by a real property sales contract, or by a lease together with an option to purchase, or a ground lease coupled with improvements, as soon as practicable before execution of the contract. For the purpose of this paragraph, execution means the making or acceptance of an offer.

With respect to any transfer subject to paragraph (a) or (b), the transferor shall indicate compliance with Sections 89-1-501 through 89-1-523 either on the receipt for deposit, the real property sales contract, the lease, or any addendum attached thereto or on a separate document.

If any disclosure, or any material amendment of any disclosure, required to be made by Section 89-1-501 through 89-1-523, is delivered after the execution of an offer to purchase, the transferee shall have three (3) days after delivery in person or five (5) days after delivery by deposit in the mail, to terminate his or her offer by delivery of a written notice of termination to the transferor or the transferor's agent.

HISTORY: Laws, 1993, ch. 407, § 2; Laws, 2002, ch. 512, § 17, eff from and after July 1, 2002.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section as amended by Laws of 2002, ch. 512, § 17. The words "this act" in the next to last paragraph were changed to "Sections 89-1-501 through 89-1-523." The Joint Committee ratified the correction at its May 16, 2002, meeting.

Cross References — Amendment of any disclosure made pursuant to §§ 89-1-501 through 89-1-523 must follow provisions of this section, see § 89-1-515.

RESEARCH REFERENCES

ALR.

Broker's liability for damages or losses sustained by vendor of real property to vendee because of broker's misrepresentations. 61 A.L.R.2d 1237.

Liability of vendor of structure for failure to disclose that it was built on filled ground. 80 A.L.R.2d 1453.

Duty of vendor of real estate to give purchaser information as to termite infestation. 22 A.L.R.3d 972.

Fraud predicated on vendor's misrepresentation or concealment of danger or possibility of flooding or other unfavorable water conditions. 90 A.L.R.3d 568.

Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold. 46 A.L.R.4th 546.

Broker's liability for fraud or misrepresentation concerning development or nondevelopment of nearby property. 71 A.L.R.4th 511.

Real-estate broker's power to bind principal by representations as to character, condition, location, quantity, or title of property. 58 A.L.R.2d 10.

Am. Jur.

12 Am. Jur. 2d, Brokers §§ 88, 89, 92.

77 Am. Jur. 2d, Vendor and Purchaser §§ 278 et seq.

24 Am. Jur. Pl & Pr Forms (Rev), Vendor and Purchaser, Forms 59, 113 et seq. (complaint, petition or declaration-for rescission or for damages for fraud-nondisclosure or particular misrepresentations as to condition of realty).

16 Am. Jur. Proof of Facts 2d 719, Real Estate Broker's Misrepresentation of Condition or Value of Realty.

CJS.

12 C.J.S., Brokers §§ 165, 166.

92 C.J.S., Vendor and Purchaser §§ 106-110.

§ 89-1-505. Limit on duties and liabilities with respect to information required or delivered.

(1) Neither the transferor nor any listing or selling agent shall be liable for any error, inaccuracy or omission of any information delivered pursuant to Sections 89-1-501 through 89-1-523 if the error, inaccuracy or omission was not within the personal knowledge of the transferor or that listing or selling agent, was based on information timely provided by public agencies or by other persons providing information as specified in subsection (2) that is required to be disclosed pursuant to Sections 89-1-501 through 89-1-523, and ordinary care was exercised in obtaining and transmitting it.

(2) The delivery of any information required to be disclosed by Sections 89-1-501 through 89-1-523 to a prospective transferee by a public agency or other person providing information required to be disclosed pursuant to Sections 89-1-501 through 89-1-523 shall be deemed to comply with the requirements of Sections 89-1-501 through 89-1-523 and shall relieve the transferor or any listing or selling agent of any further duty under Sections 89-1-501 through 89-1-523 with respect to that item of information.

(3) The delivery of a report or opinion prepared by a licensed engineer, land surveyor, geologist, structural pest control operator, contractor or other expert, dealing with matters within the scope of the professional's license or expertise, shall be sufficient compliance for application of the exemption

provided by subsection (1) if the information is provided to the prospective transferee pursuant to a request therefor, whether written or oral. In responding to such a request, an expert may indicate, in writing, an understanding that the information provided will be used in fulfilling the requirements of Section 89-1-509 and, if so, shall indicate the required disclosures, or parts thereof, to which the information being furnished is applicable. Where such a statement is furnished, the expert shall not be responsible for any items of information, or parts thereof, other than those expressly set forth in the statement.

HISTORY: Laws, 1993, ch. 407, § 3, eff from and after July 1, 1993.

JUDICIAL DECISIONS

ANALYSIS

1. Dismissal proper.
2. Personal knowledge.

1. Dismissal proper.

Summary judgment and dismissal of the home buyers' suit against the home sellers (in which they contended the sellers intentionally misrepresented the condition of the property) was proper as the buyers offered no evidence that the sellers intentionally misrepresented the condition of their property, or that the sellers had any personal knowledge of the conditions discovered by the buyers subsequent to their purchase. Additionally, the buyers hired their own licensed inspector prior to the closing of sale, and pursuant to his recommendations, the buyers were apparently satisfied enough with the conditions of the property to follow through with the contract and purchase the property. Williams v. Estate of Morrison, 969 So. 2d 132, 2007 Miss. App. LEXIS 734 (Miss. Ct. App. 2007).

2. Personal knowledge.

Sellers did not get to avail themselves of the protections in the statutes because the information and subject of their omissions were within their personal knowledge. Lewis v. Rula, 293 So. 3d 317, 2020 Miss. App. LEXIS 86 (Miss. Ct. App. 2020).

RESEARCH REFERENCES

Am. Jur.

12 Am. Jur. 2d, Brokers §§ 88, 89, 92.

77 Am. Jur. 2d, Vendor and Purchaser §§ 278 et seq.

CJS.

12 C.J.S., Brokers §§ 165, 166.

92 C.J.S., Vendor and Purchaser §§ 106-110.

§ 89-1-507. Approximation of certain information required to be disclosed; information subsequently rendered inaccurate.

If information disclosed in accordance with Sections 89-1-501 through 89-1-523 is subsequently rendered inaccurate as a result of any act, occurrence or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of Sections 89-1-501 through 89-1-523. If at the time the disclosures are required to be made, an item of information required to be disclosed is unknown or not available to the transferor, and the transferor or his agent has made a reasonable effort to ascertain it, the transferor may use an approximation of the information, provided the approximation is clearly identified as such, is reasonable, is based on the best information available to the transferor or his agent, and is not used for the purpose of circumventing or evading Sections 89-1-501 through 89-1-523.

HISTORY: Laws, 1993, ch. 407, § 4, eff from and after July 1, 1993.

RESEARCH REFERENCES

ALR.

Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold. 46 A.L.R.4th 546.

Am. Jur.

12 Am. Jur. 2d, Brokers §§ 88, 89, 92.

77 Am. Jur. 2d, Vendor and Purchaser §§ 278 et seq.

CJS.

12 C.J.S., Brokers § 165, 166.

92 C.J.S., Vendor and Purchaser §§ 106-110.

§ 89-1-509. Form of seller's disclosure statement.

The disclosures required by Sections 89-1-501 through 89-1-523 pertaining to the property proposed to be transferred shall be set forth in, and shall be made on a copy of a disclosure form, the structure and composition of which shall be determined by the Mississippi Real Estate Commission.

HISTORY: Laws, 1993, ch. 407, § 5; Laws, 1997, ch. 456, § 2; Laws, 1999, ch. 588, § 4, eff from and after Jan. 1, 2000.

Cross References — Mississippi Real Estate Commission, see § 73-35-5.

Information provided avowedly in fulfillment of this section as relieving expert of responsibility with respect to any information other than that set forth, see § 89-1-505.

RESEARCH REFERENCES

ALR.

Vendor's obligation to disclose to purchaser of land presence of contamination from hazardous substances or wastes. 12 A.L.R.5th 630.

Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold. 46 A.L.R.4th 546.

Am. Jur.

12 Am. Jur. 2d, Brokers §§ 88, 89, 92.

77 Am. Jur. 2d, Vendor and Purchaser §§ 278 et seq.

CJS.

12 C.J.S., Brokers §§ 165, 166.

92 C.J.S., Vendor and Purchaser §§ 106-110.

§ 89-1-511. Disclosures to be made in good faith.

Each disclosure required by Sections 89-1-501 through 89-1-523 and each act which may be performed in making the disclosure, shall be made in good faith. For purposes of Sections 89-1-501 through 89-1-523, "good faith" means honesty in fact in the conduct of the transaction.

HISTORY: Laws, 1993, ch. 407, § 6, eff from and after July 1, 1993.

RESEARCH REFERENCES

ALR.
Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold. 46 A.L.R.4th 546.

Am. Jur.
12 Am. Jur. 2d, Brokers §§ 88, 89, 92.
77 Am. Jur. 2d, Vendor and Purchaser §§ 278 et seq.

CJS.
12 C.J.S., Brokers §§ 165, 166.
92 C.J.S., Vendor and Purchaser §§ 106-110.

§ 89-1-513. Provisions not exhaustive of items to be disclosed.

The specification of items for disclosure in Sections 89-1-501 through 89-1-523 does not limit or abridge any obligation for disclosure created by any other provision of law or which may exist in order to avoid fraud, misrepresentation or deceit in the transfer transaction.

HISTORY: Laws, 1993, ch. 407, § 7, eff from and after July 1, 1993.

RESEARCH REFERENCES

ALR.
Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold. 46 A.L.R.4th 546.

Am. Jur.
12 Am. Jur. 2d, Brokers §§ 88, 89, 92.
77 Am. Jur. 2d, Vendor and Purchaser §§ 278 et seq.

CJS.
12 C.J.S., Brokers §§ 165, 166.
92 C.J.S., Vendor and Purchaser §§ 106-110.

§ 89-1-515. Amendment of disclosure.

Any disclosure made pursuant to Sections 89-1-501 through 89-1-523 may be amended in writing by the transferor or his agent, but the amendment shall be subject to the provisions of Section 89-1-503.

HISTORY: Laws, 1993, ch. 407, § 8, eff from and after July 1, 1993.

RESEARCH REFERENCES

ALR.
Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold. 46 A.L.R.4th 546.

Am. Jur.
12 Am. Jur. 2d, Brokers §§ 88, 89, 92.
77 Am. Jur. 2d, Vendor and Purchaser §§ 278 et seq.

CJS.
12 C.J.S., Brokers §§ 165, 166.
92 C.J.S., Vendor and Purchaser §§ 106-110.

§ 89-1-517. Delivery of disclosure.

Delivery of disclosure required by Sections 89-1-501 through 89-1-523 shall be by personal delivery to the transferee or by mail to the prospective transferee. For the purposes of Sections 89-1-501 through 89-1-523, delivery to the spouse of a transferee shall be deemed delivery to the transferee, unless provided otherwise by contract.

HISTORY: Laws, 1993, ch. 407, § 9, eff from and after July 1, 1993.

§ 89-1-519. Agent; extent of agency.

Any person or entity, other than a duly licensed real estate broker or salesperson acting in the capacity of an escrow agent for the transfer of real property subject to Sections 89-1-501 through 89-1-523 shall not be deemed the agent of the transferor or transferee for purposes of the disclosure requirements of Sections 89-1-501 through 89-1-523, unless the person or entity is empowered to so act by an express written agreement to that effect. The extent of such an agency shall be governed by the written agreement.

HISTORY: Laws, 1993, ch. 407, § 10, eff from and after July 1, 1993.

RESEARCH REFERENCES

ALR.

Real-estate broker's power to bind principal by representations as to character, condition, location, quantity, or title of property. 58 A.L.R.2d 10.

Broker's liability for damages or losses sustained by vendor of real property to vendee because of broker's misrepresentations. 61 A.L.R.2d 1237.

Real estate broker's liability for misrepresentation as to income from or productivity of property. 81 A.L.R.3d 717.

Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold. 46 A.L.R.4th 546.

Broker's liability for fraud or misrepresentation concerning development or nondevelopment of nearby property. 71 A.L.R.4th 511.

Am. Jur.

12 Am. Jur. 2d, Brokers §§ 88, 89, 92.

16 Am. Jur. Proof of Facts 2d 719, Real Estate Broker's Misrepresentation of Condition or Value of Realty.

CJS.

12 C.J.S., Brokers §§ 165, 166.

§ 89-1-521. Delivery of disclosure where more than one agent; inability of delivering broker to obtain disclosure document; notification to transferee of right to disclosure.

(1) If more than one (1) licensed real estate broker is acting as an agent in a transaction subject to Sections 89-1-501 through 89-1-523, the broker who has obtained the offer made by the transferee shall, except as otherwise provided in Sections 89-1-501 through 89-1-523, deliver the disclosure required by Sections 89-1-501 through 89-1-523 to the transferee, unless the transferor has given other written instructions for delivery.

(2) If a licensed real estate broker responsible for delivering the disclosures under this section cannot obtain the disclosure document required and

does not have written assurance from the transferee that the disclosure has been received, the broker shall advise the transferee in writing of his rights to the disclosure. A licensed real estate broker responsible for delivering disclosures under this section shall maintain a record of the action taken to effect compliance.

HISTORY: Laws, 1993, ch. 407, § 11, eff from and after July 1, 1993.

JUDICIAL DECISIONS

1. Failure to deliver.

Finding against three real estate agents in the buyer's complaint alleging improper conduct was appropriate because the agents were unable to explain why their files had not been maintained as required by the Mississippi Real Estate Commission's regulations. Further, there was no evidence that the statement was delivered to the buyer as required by Mississippi Code Annotated section 89-1-521(l). Palmer v. Miss. Real Estate Comm'n, 14 So. 3d 67, 2008 Miss. App. LEXIS 785 (Miss. Ct. App. 2008).

RESEARCH REFERENCES

ALR.

Real-estate broker's power to bind principal by representations as to character, condition, location, quantity, or title of property. 58 A.L.R.2d 10.

Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold. 46 A.L.R.4th 546.

Broker's liability for damages or losses sustained by vendor of real property to vendee because of broker's misrepresentations. 61 A.L.R.2d 1237.

Broker's liability for fraud or misrepresentation concerning development or nondevelopment of nearby property. 71 A.L.R.4th 511.

Am. Jur.

12 Am. Jur. 2d, Brokers §§ 88, 89, 92.

16 Am. Jur. Proof of Facts 2d 719, Real Estate Broker's Misrepresentation of Condition or Value of Realty.

CJS.

12 C.J.S., Brokers §§ 165, 166.

§ 89-1-523. Noncompliance with disclosure requirements not to invalidate transfer; liability for actual damages.

No transfer subject to Sections 89-1-501 through 89-1-523 shall be invalidated solely because of the failure of any person to comply with any provision of Sections 89-1-501 through 89-1-523. However, any person who willfully or negligently violates or fails to perform any duty prescribed by any provision of Sections 89-1-501 through 89-1-523 shall be liable in the amount of actual damages suffered by a transferee.

HISTORY: Laws, 1993, ch. 407, § 12, eff from and after July 1, 1993.

JUDICIAL DECISIONS

1. In general.

This section does not change the construction of an "as is" clause to mean "as disclosed." Crase v. Hahn, 754 So. 2d 471, 1999 Miss. App. LEXIS 465 (Miss. Ct. App. 1999).

RESEARCH REFERENCES

ALR.

Broker's liability for damages or losses sustained by vendor of real property to vendee because of broker's misrepresentations. 61 A.L.R.2d 1237.

Liability of vendor of structure for failure to disclose that it was built on filled ground. 80 A.L.R.2d 1453.

Fraud predicated on vendor's misrepresentation or concealment of danger or possibility of flooding or other unfavorable water conditions. 90 A.L.R.3d 568.

Statutes of limitation: actions by purchasers or contractees against vendors or contractors involving defects in houses or other buildings caused by soil instability. 12 A.L.R.4th 866.

Liability of vendor of existing structure for property damage sustained by purchaser after transfer. 18 A.L.R.4th 1168.

Recovery of punitive damages in action by purchasers of real property charging fraud or misrepresentation. 19 A.L.R.4th 801.

Remedies for fraud or misrepresentation as to heating or cooling cost of realty purchased. 32 A.L.R.4th 828.

Broker's liability for fraud or misrepresentation concerning development or nondevelopment of nearby property. 71 A.L.R.4th 511.

Real estate broker's liability for misrepresentation as to income from or productivity of property. 81 A.L.R.3d 717.

Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold. 46 A.L.R.4th 546.

Am. Jur.

77 Am. Jur. 2d, Vendor and Purchaser §§ 278 et seq.

CJS.

92 C.J.S., Vendor and Purchaser §§ 106-110.

§ 89-1-525. Enforcement by Mississippi Real Estate Commission.

The Mississippi Real Estate Commission is authorized to enforce the provisions of Sections 89-1-501 through 89-1-523. Any violation of the provisions of Sections 89-1-501 through 89-1-523 shall be treated in the same manner as a violation of the Real Estate Broker License Law of 1954, Section 73-35-1 et seq., and shall be subject to same penalties as provided in that chapter.

HISTORY: Laws, 1997, ch. 456, § 3, eff from and after July 1, 1997.

Cross References — Real Estate Broker License Law of 1954, see §§ 73-35-1 et seq. Creation of Mississippi Real Estate Commission, see § 73-35-5.

§ 89-1-527. Failure to disclose nonmaterial fact regarding property as site of death or felony crime, as site of act or occurrence having no effect on physical condition of property, or as being owned or occupied by persons affected or exposed to certain diseases; failure to disclose information provided or maintained on registration of sex offenders.

(1) The fact or suspicion that real property is or was:

(a) The site of a natural death, suicide, homicide or felony crime (except for illegal drug activity that affects the physical condition of the property, its physical environment or the improvements located thereon);

(b) The site of an act or occurrence that had no effect on the physical condition of the property, its physical environment or the improvements located thereon;

(c) Owned or occupied by a person affected or exposed to any disease not known to be transmitted through common occupancy of real estate including, but not limited to, the human immunodeficiency virus (HIV) and the acquired immune deficiency syndrome (AIDS);

does not constitute a material fact that must be disclosed in a real estate transaction. A failure to disclose such nonmaterial facts or suspicions shall not give rise to a criminal, civil or administrative action against the owner of such real property, a licensed real estate broker or any affiliated licensee of the broker.

(2) A failure to disclose in any real estate transaction any information that is provided or maintained, or is required to be provided or maintained, in accordance with Section 45-33-21 through Section 45-33-57, shall not give rise to a cause of action against an owner of real property, a licensed real estate broker or any affiliated licensee of the broker. Likewise, no cause of action shall arise against any licensed real estate broker or affiliated licensee of the broker for revealing information to a seller or buyer of real estate in accordance with Section 45-33-21 through Section 45-33-57. Any factors related to this subsection, if known to a property owner or licensee shall be disclosed if requested by a consumer.

(3) Failure to disclose any of the facts or suspicions of facts described in subsections (1) and (2) shall not be grounds for the termination or rescission of any transaction in which real property has been or will be transferred or leased. This provision does not preclude an action against an owner of real estate who makes intentional or fraudulent misrepresentations in response to a direct inquiry from a purchaser or prospective purchaser regarding facts or suspicions that are not material to the physical condition of the property including, but not limited to, those factors listed in subsections (1) and (2).

HISTORY: Laws, 2005, ch. 329, § 1, eff from and after July 1, 2005.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal statutory reference in (2) by substituting “this subsection” for “this paragraph.” The Joint Committee ratified the correction at its August 20, 2021, meeting.

Cross References — Exclusion of this section from provisions of §§ 89-1-501 through 89-1-523, see § 89-1-501.

CHAPTER 2.

LIABILITY OF RECREATIONAL LANDOWNERS

Article 1. Outdoor Recreational Land. 89-2-1
Article 3. Limitation of Liability. 89-2-21

ARTICLE 1.

OUTDOOR RECREATIONAL LAND.

Sec.
89-2-1. Declaration of purpose; effect of opening property for outdoor recreational purposes.
89-2-3. Definitions.
89-2-5. Certain liability not limited.
89-2-7. Application of article.

§ 89-2-1. Declaration of purpose; effect of opening property for outdoor recreational purposes.

The purpose of this article is to encourage persons to make available to the public land and water areas for outdoor recreational purposes. A lessee or owner who opens a land or water area to the public for outdoor recreational purposes shall not, by opening such land or water for such use:

(a) Be presumed to extend any assurance that such land or water area is safe for any purpose;

(b) Incur any duty of care toward a person who goes on the land or water area; or

(c) Become liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the land or water area.

The foregoing applies, whether the person going on the land or water area is an invitee, licensee, trespasser or otherwise.

HISTORY: Laws, 1978, ch. 488, § 1(1), eff from and after July 1, 1978.

Editor's Notes — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the reference to "this chapter" in the first sentence of the section has been corrected to read "this article."

Cross References — Effect of landowner's permission to use land, see § 89-5-25.

Exceptions to limitations of landowner's liability, see § 89-2-27.

RESEARCH REFERENCES

ALR.

Modern status of rules conditioning landowner's liability upon status of injured party as invitee, licensee, or trespasser. 22 A.L.R.4th 294.

Effect of statute limiting landowner's liability for personal injury to recreational user. 47 A.L.R.4th 262.

Am. Jur.

62 Am. Jur. 2d, Premises Liability §§ 68 et seq.

20 Am. Jur. Pl & Pr Forms (Rev), Premises Liability, Form 179.2 (answer, defense, plaintiff injured during recreational use of defendant's property, statutory defense).

§ 89-2-3. Definitions.

The term "outdoor recreational purposes" as used in this article shall include, but not necessarily be limited to, hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing and visiting historical, archaeological, scenic or scientific sites.

HISTORY: Laws, 1978, ch. 488, § 1(3), eff from and after July 1, 1978.

Editor's Notes — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the reference to "this chapter" near the beginning of the section has been corrected to read "this article."

RESEARCH REFERENCES

ALR.

Effect of statute limiting landowner's liability for personal injury to recreational user. 47 A.L.R.4th 262.

Am. Jur.

20 Am. Jur. Pl & Pr Forms (Rev), Premises Liability, Form 179.2 (answer, defense, plaintiff injured during recreational use of defendant's property, statutory defense).

§ 89-2-5. Certain liability not limited.

This article does not relieve any person of liability which would otherwise exist for deliberate, willful or malicious injury to persons or property. The provisions hereof shall not be deemed to create or increase the liability of any person.

HISTORY: Laws, 1978, ch. 488, § 1(2), eff from and after July 1, 1978.

Editor's Notes — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the reference to "This chapter" at the beginning of the section has been corrected to read "This article."

RESEARCH REFERENCES

ALR.

Modern status of rules conditioning landowner's liability upon status of injured party as invitee, licensee, or trespasser. 22 A.L.R.4th 294.

Effect of statute limiting landowner's liability for personal injury to recreational user. 47 A.L.R.4th 262.

Am. Jur.

62 Am. Jur. 2d, Premises Liability §§ 68 et seq.

20 Am. Jur. Pl & Pr Forms (Rev), Premises Liability, Form 179.2 (answer, defense, plaintiff injured during recreational use of defendant's property, statutory defense).

§ 89-2-7. Application of article.

The provisions of this article shall not apply if any fee is charged for entering or using any part of such land or water outdoor recreational area, or if any concession is operated on said area offering to sell or selling any item or product to persons entering thereon for recreational purposes. Said article shall not apply unless public notice of the availability of such lands for such public use shall have been published once annually in a newspaper of general circulation in the county where such lands are situated.

HISTORY: Laws, 1978, ch. 488, § 2, eff from and after July 1, 1978.

Editor's Notes — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, the reference to "this chapter" near the beginning of the first sentence has been corrected to read "this article" and the reference to "Said chapter" at the beginning of the second sentence has been corrected to read "Said article."

JUDICIAL DECISIONS

1. In general.

Protection of § 89-2-1 is not available to landowner who made no attempt to comply with statutory notice provision contained in last sentence of § 89-2-7. Dumas v. Pike County, 642 F. Supp. 131, 1986 U.S. Dist. LEXIS 25794 (S.D. Miss. 1986).

RESEARCH REFERENCES

ALR.

Modern status of rules conditioning landowner's liability upon status of injured party as invitee, licensee, or trespasser. 32 A.L.R.3d 508.

Effect of statute limiting landowner's liability for personal injury to recreational user. 47 A.L.R.4th 262.

Am. Jur.

62 Am. Jur. 2d, Premises Liability §§ 68 et seq.

20 Am. Jur. Pl & Pr Forms (Rev), Premises Liability, Form 179.2 (answer, defense, plaintiff injured during recreational use of defendant's property, statutory defense).

ARTICLE 3.

LIMITATION OF LIABILITY.

Sec.
89-2-21. Definitions.
89-2-23. Landowner's duty of care with respect to recreational users of land.
89-2-25. Effect of landowner's permission to use land.
89-2-27. Exceptions to limitation of liability.

§ 89-2-21. Definitions.

For the purposes of this article, the following words shall have the meanings ascribed herein, unless the context otherwise requires:

(a) "Land" or "premises" means all real property, waters and private ways, and all trees, buildings and structures which are located on such real property, waters and private ways.

(b) "Landowner" means the legal titleholder or owner of land or premises, and includes any lessee, occupant or any other person in control of such land or premises.

HISTORY: Laws, 1986, ch. 360, § 1, eff from and after July 1, 1986.

RESEARCH REFERENCES

ALR.

Effect of statute limiting landowner's liability for personal injury to recreational user. 47 A.L.R.4th 262.

Am. Jur.

62 Am. Jur. 2d, Premises Liability §§ 30, 31, 68 et seq., 72-76, 226.

CJS.

65 C.J.S., Negligence §§ 67 et seq., 76, 77et seq., 86 et seq.

§ 89-2-23. Landowner's duty of care with respect to recreational users of land.

Except as provided for in Section 89-2-27, a landowner: (a) shall owe no duty of care to keep land or premises safe for entry or use by others for hunting, fishing, trapping, camping, water sports, hiking or sightseeing; and (b) shall not be required to give any warning to any person entering on land or premises for hunting, fishing, trapping, camping, water sports, hiking or sightseeing as to any hazardous conditions or uses of, or hazardous structures or activities on such land or premises.

HISTORY: Laws, 1986, ch. 360, § 2, eff from and after July 1, 1986.

Cross References — Exceptions to limitations of liability, see § 89-2-27.

RESEARCH REFERENCES

ALR.

Common-law strict liability in tort of prior landowner or lessee to subsequent owner for contamination of land with hazardous waste resulting from prior owner's or lessee's abnormally dangerous or ultrahazardous activity. 13 A.L.R.5th 600.

Prejudicial effect of unauthorized view by jury in civil case of scene of accident or premises in question. 11 A.L.R.3d 918.

Comment note.-Premises liability: Proceeding in the dark as contributory negligence. 22 A.L.R.3d 286.

Premises liability: Proceeding in the dark along outside path or walkway as contributory negligence. 22 A.L.R.3d 599.

Premises liability: Proceeding in the dark across exterior premises as contributory negligence. 23 A.L.R.3d 441.

Comment note.-Duty of possessor of land to warn child licensees of danger. 26 A.L.R.3d 317.

Modern status of the rule absolving a possessor of land of liability to those coming thereon for harm caused by dangerous physical conditions of which the injured party knew and realized the risk. 35 A.L.R.3d 230.

Liability of owner or operator of trailer camp or park for injury or death from condition of premises. 41 A.L.R.3d 546.

Liability in connection with injury allegedly caused by defective condition of private road or driveway. 44 A.L.R.3d 355.

Liability of vendor or grantor of real estate for personal injury to purchaser or third person due to defective condition of premises. 48 A.L.R.3d 1027.

Attractive nuisance doctrine as applied to trees, shrubs, and the like. 59 A.L.R.3d 848.

Comment note.-Duty to take affirmative action to avoid injury to trespasser in position of peril through no fault of landowner. 70 A.L.R.3d 1125.

Liability for injuries in connection with ice or snow on nonresidential premises. 95 A.L.R.3d 15.

Modern status of rules as to admissibility of evidence of prior accidents or injuries at same place. 21 A.L.R.4th 472.

Modern status of rules conditioning landowner's liability upon status of injured party as invitee, licensee, or trespasser. 22 A.L.R.4th 294.

Liability of owner or occupant of premises to police officer coming thereon in discharge of officer's duty. 30 A.L.R.4th 81.

Effect of statute limiting landowner's liability for personal injury to recreational user. 47 A.L.R.4th 262.

Violation of governmental regulations as to conditions and facilities of swimming pools as affecting liability in negligence. 79 A.L.R.4th 461.

Am. Jur.

62 Am. Jur. 2d, Premises Liability §§ 30, 31, 68 et seq., 72-76, 226.

18A Am. Jur. Pl & Pr Forms (Rev), Negligence, Form 149.2 (Complaint, petition, or declaration-By family of decedent-Against owner of building where fatal shooting occurred).

20 Am. Jur. Pl & Pr Forms (Rev), Premises Liability, Form 115.1 (complaint by social guest injured by dive into shallow lake against lake owner and lakefront property owner).

48 Am. Jur. Proof of Facts 2d 275, Premises Liability: Willful or Wanton Conduct causing Injury to Entrant.

4 Am. Jur. Proof of Facts 3d 1, Swimming Pool Diving Injuries-Failure to Warn of Dangerous Condition.

CJS.

65 C.J.S., Negligence §§ 67 et seq., 76, 77et seq., 86 et seq.

§ 89-2-25. Effect of landowner's permission to use land.

Any landowner who gives permission to another person to hunt, fish, trap, camp, hike or sightsee upon land or premises shall not, by the sole act of giving such permission, be considered or construed to have:

(a) Extended any assurance that the premises are safe for such purposes;

(b) Caused the person to whom permission has been granted to be constituted the legal status of an invitee to whom a duty of care is owed; or

(c) Assumed responsibility or liability for any injury to such person or his property caused by any act of such person to whom permission has been granted, except as provided in Section 89-2-27.

HISTORY: Laws, 1986, ch. 360, § 3, eff from and after July 1, 1986.

Cross References — Exceptions to limitations of liability, see § 89-2-27.

RESEARCH REFERENCES

ALR.

Prejudicial effect of unauthorized view by jury in civil case of scene of accident or premises in question. 11 A.L.R.3d 918.

Proceeding in the dark as contributory negligence. 22 A.L.R.3d 286.

Proceeding in the dark along outside path or walkway as contributory negligence. 22 A.L.R.3d 599.

Proceeding in the dark across exterior premises as contributory negligence. 23 A.L.R.3d 441.

Duty of possessor of land to warn child licensees of danger. 26 A.L.R.3d 317.

Modern status of the rule absolving a possessor of land of liability to those coming thereon for harm caused by dangerous physical conditions of which the injured party knew and realized the risk. 35 A.L.R.3d 230.

Liability of owner or operator of trailer camp or park for injury or death from condition of premises. 41 A.L.R.3d 546.

Liability in connection with injury allegedly caused by defective condition of private road or driveway. 44 A.L.R.3d 355.

Liability of vendor or grantor of real estate for personal injury to purchaser or third person due to defective condition of premises. 48 A.L.R.3d 1027.

Attractive nuisance doctrine as applied to trees, shrubs, and the like. 59 A.L.R.3d 848.

Duty to take affirmative action to avoid injury to trespasser in position of peril through no fault of landowner. 70 A.L.R.3d 1125.

Liability for injuries in connection with ice or snow on nonresidential premises. 95 A.L.R.3d 15.

Modern status of rules as to admissibility of evidence of prior accidents or injuries at same place. 21 A.L.R.4th 472.

Modern status of rules conditioning landowner's liability upon status of injured party as invitee, licensee, or trespasser. 22 A.L.R.4th 294.

Liability of owner or occupant of premises to police officer coming thereon in discharge of officer's duty. 30 A.L.R.4th 81.

Effect of statute limiting landowner's liability for personal injury to recreational user. 47 A.L.R.4th 262.

Am. Jur.

62 Am. Jur. 2d, Premises Liability §§ 30, 31, 68 et seq., 72-76, 226.

20 Am. Jur. Pl & Pr Forms (Rev), Premises Liability, Form 115.1 (complaint by social guest injured by dive into shallow lake against lake owner and lakefront property owner).

CJS.

65 C.J.S., Negligence §§ 67 et seq., 76, 77et seq., 86 et seq.

§ 89-2-27. Exceptions to limitation of liability.

This article shall not limit any liability which otherwise exists for:

(a) Willful or malicious failure to guard or warn against a hazardous condition, use, structure or activity;

(b) Injuries suffered in any case where permission to hunt, fish, trap, camp, hike, sightsee or engage in any other lawful activity was granted for a consideration other than the consideration, if any, paid to the landowner by the State of Mississippi, the federal government, or any other governmental agency; or

(c) Injuries to third persons or to persons to whom the landowner owed a duty to keep the land or premises safe or to warn of danger, which injuries were caused by acts of persons to whom permission to hunt, fish, camp, hike, sightsee or engage in any other lawful activity was granted.

HISTORY: Laws, 1986, ch. 360, § 4, eff from and after July 1, 1986.

Cross References — Limitation of a landowner's liability to recreational users of land, to which limitation this section provides exceptions, see §§ 89-2-23 and 89-2-25.

RESEARCH REFERENCES

ALR.

Common-law strict liability in tort of prior landowner or lessee to subsequent owner for contamination of land with hazardous waste resulting from prior owner's or lessee's abnormally dangerous or ultrahazardous activity. 13 A.L.R.5th 600.

Prejudicial effect of unauthorized view by jury in civil case of scene of accident or premises in question. 11 A.L.R.3d 918.

Proceeding in the dark as contributory negligence. 22 A.L.R.3d 286.

Proceeding in the dark along outside path or walkway as contributory negligence. 22 A.L.R.3d 599.

Proceeding in the dark across exterior premises as contributory negligence. 23 A.L.R.3d 441.

Duty of possessor of land to warn child licensees of danger. 26 A.L.R.3d 317.

Modern status of the rule absolving a possessor of land of liability to those coming thereon for harm caused by dangerous physical conditions of which the injured party knew and realized the risk. 35 A.L.R.3d 230.

Liability of owner or operator of trailer camp or park for injury or death from condition of premises. 41 A.L.R.3d 546.

Liability in connection with injury allegedly caused by defective condition of private road or driveway. 44 A.L.R.3d 355.

Liability of vendor or grantor of real estate for personal injury to purchaser or third person due to defective condition of premises. 48 A.L.R.3d 1027.

Attractive nuisance doctrine as applied to trees, shrubs, and the like. 59 A.L.R.3d 848.

Duty to take affirmative action to avoid injury to trespasser in position of peril through no fault of landowner. 70 A.L.R.3d 1125.

Liability for injuries in connection with ice or snow on nonresidential premises. 95 A.L.R.3d 15.

Modern status of rules as to admissibility of evidence of prior accidents or injuries at same place. 21 A.L.R.4th 472.

Modern status of rules conditioning landowner's liability upon status of injured party as invitee, licensee, or trespasser. 22 A.L.R.4th 294.

Liability of owner or occupant of premises to police officer coming thereon in discharge of officer's duty. 30 A.L.R.4th 81.

Effect of statute limiting landowner's liability for personal injury to recreational user. 47 A.L.R.4th 262.

Am. Jur.

62 Am. Jur. 2d, Premises Liability §§ 30, 31, 68 et seq., 72-76, 226.

4 Am. Jur. Proof of Facts 3d 1, Swimming Pool Diving Injuries-Failure to Warn of Dangerous Condition.

CJS.

65 C.J.S., Negligence §§ 67 et seq., 76, 77et seq., 86 et seq.

CHAPTER 3.

ACKNOWLEDGMENTS

Sec.
89-3-1. Acknowledgment or proof necessary to recording; recording of tangible copy of electronic document; certificate of electronic document.
89-3-3 and 89-3-5. Repealed.
89-3-7. Forms of acknowledgment.
89-3-9 through 89-3-15. Repealed.

§ 89-3-1. Acknowledgment or proof necessary to recording; recording of tangible copy of electronic document; certificate of electronic document.

(1) A document concerning real property or conveying personal property may not be recorded unless, in the case of a paper document, it contains an original signature or signatures, or in the case of an electronic document, contains an electronic signature or signatures that comply with the Uniform Real Property Electronic Recording Act (Article 3, Chapter 5, Title 89, Mississippi Code of 1972). For purposes of this section, the terms "document," "paper document" and "electronic document" have the meaning given in the Uniform Real Property Electronic Recording Act. A document concerning real property or conveying personal property which conforms to this subsection may be recorded if it is acknowledged or proved according to law, or in the case of a document that is an affidavit, verified upon oath or affirmation.

(2)(a) A tangible copy of an electronic document that is otherwise eligible for recording under the laws of this state may be recorded if the tangible copy of the electronic document has been certified to be a true and correct copy of the electronic document as required in paragraph (b) of this subsection (2).

(b) The certificate must be transmitted with and be recorded as a part of the tangible copy of the electronic document being recorded and must:

(i) Contain an original signature of a licensed attorney or custodian of the electronic document that is verified upon oath or affirmation;

(ii) Identify the jurisdiction in which the certification is performed;

(iii) Contain the title of the notarial officer;

(iv) Indicate the date of expiration, if any, of the notarial officer's commission; and

(v) Include an official seal of the notary public affixed to the certificate.

(c) The following form of certificate is sufficient for purposes of this subsection if completed with the information required in paragraph (b) of this subsection:

"CERTIFICATE OF ELECTRONIC DOCUMENT

I, ________________, [a licensed attorney or the custodian of the electronic document], hereby certify that the attached document, ________________ (insert title), on ________(date), and containing ____ pages, is a true and correct copy of an electronic document printed by me or under my supervision. A false certification under this section shall be subject to any penalties provided by law for such.

____

(Signature of person making certification)

STATE OF ________________

COUNTY OF ________________

Signed and sworn to (or affirmed) before me on ________(date) by ____________________________________ (name(s) of individual(s) making statement).

____

(Signature of Notarial Officer)

____

(Title of officer)

My commission expires:________________

(Affix official seal, if applicable)"

(d) All tangible copies of electronic documents eligible for recording under this subsection (2) are validly recorded when accepted for recording by the chancery clerk's office. Tangible copies of electronic documents recorded by a chancery clerk before the effective date of the Revised Mississippi Law on Notarial Acts shall be considered validly recorded with or without the certification provided in paragraph (b) of this subsection (2).

(e) The person making the certification provided in this section must:

(i) Confirm that the electronic document contains an electronic signature that is capable of independent verification and renders any subsequent changes or modifications to the electronic document evident;

(ii) Personally print or supervise the printing of the electronic document onto paper; and

(iii) Not make any changes or modifications to the electronic document other than the certification described in this subsection (2).

(f) If a certificate is completed with the information required by paragraph (b) of this subsection (2) and is attached to or made part of a tangible copy of an electronic document, the certificate is prima facie evidence that the requirements of paragraph (e) of this subsection (2) have been satisfied.

(g) This section does not apply to maps or plats that are subject to the requirements of Section 19-27-23, 19-27-25 or 19-27-27.

(3) The chancery clerk's office may refuse to record a document that does not satisfy the requirements of this section. However, if a document does not satisfy subsection (1) or (2) of this section, but is otherwise admitted to record, then all persons shall be on constructive notice of the contents of the document.

(4) If the relative priorities of conflicting claims to real property were established before July 1, 2011, then the law applicable to those claims at the time those claims were established shall determine their priority.

(5) This section does not require the acknowledgement or verification upon oath or affirmation or prohibit the recording of any of the following filed

for record under the Uniform Commercial Code or otherwise specially provided for by law:

(a) A financing statement;

(b) A security agreement filed as a financing statement; or

(c) A continuation statement.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (7); 1857, ch. 36, art. 25; 1871, § 2308; 1880, § 1215; 1892, § 2460; 1906, § 2793; Hemingway's 1917, § 2294; 1930, § 2135; 1942, § 856; Laws, 1966, ch. 316, § 10-105; Laws, 2011, ch. 364, § 8; Laws, 2011, ch. 538, § 2, eff from and after July 1, 2011; Laws, 2020, ch. 382, § 31, eff from and after July 1, 2021; Laws, 2021, ch. 434, § 1, eff from and after July 1, 2021.

Joint Legislative Committee Note — Section 8 of ch. 364, Laws of 2011, effective from and after July 1, 2011 (approved March 11, 2011), amended this section. Section 2 of ch. 538, Laws of 2011, effective July 1, 2011 (approved April 26, 2011), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 538, Laws of 2011, which contains language that specifically provides that it supersedes § 89-3-1 as amended by Laws of 2011, ch. 364.

Amendment Notes — The 2020 amendment, effective July 1, 2021, rewrote (1), which read: "Except in cases governed by the Uniform Commercial Code, the provisions of Sections 89-5-101 through 89-5-113, or otherwise specially provided for by law, the execution of a written instrument of or concerning the sale of lands, whether the same be made for passing an estate of freehold or inheritance, or for a term of years, or for any other purpose, or any writing conveying personal estate, shall be acknowledged or proved, and the acknowledgment or proof duly certified by an officer competent to take the same in the manner directed by this chapter"; rewrote (2), which read: "Unless an instrument is acknowledged or proved as provided in subsection (1) of this section, the clerk's office may refuse to admit the instrument to record. However, if an instrument is not so acknowledged or proved but is otherwise admitted to record, then all persons shall be on constructive notice of the contents of the instrument"; in (3), deleted the former first sentence, which read: "The provisions of subsection (2) of this section shall apply to all instruments of record on or after July 1, 2011," deleted "However" from the beginning of the second sentence, and made a related change; and added (4).

The 2021 amendment added (2); redesignated former (2) through (4) as (3) through (5); and in (3), substituted "the requirements of this section" for "subsection (1)" in the first sentence, and inserted "or (2) of this section" in the last sentence.

Cross References — Duty of chancery clerk to record instruments, see § 9-5-137.

Priority of security interests and fixtures, see § 75-9-313.

Place of filing in order to perfect security interest under Uniform Commercial Code, see § 75-9-501.

Recording of instruments generally, see § 89-5-1.

Recording of patents, whether acknowledged or not, see § 89-5-11.

Validity of deeds recorded for a 20 year period, see § 89-5-13.

Recording of wills, see §§ 91-7-31, 91-7-33.

Criminal offense of false certificate of acknowledgment or proof of deeds and other recordable instruments, see § 97-21-7.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Record of defectively acknowledged deed.

1. In general.

Chancery court properly granted a decedent's former wife summary judgment in an executrix's action seeking to void deeds because the property-settlement agreement between the decedent and wife contemplated that the property would pass by survivorship; the conveyances of the wife's undivided one-half interest were void, and thus, the original joint tenancy with rights of survivorship was still intact at the decedent's death, and the wife was entitled to the entire property. O'Brien v. Westedt, 243 So. 3d 792, 2018 Miss. App. LEXIS 165 (Miss. Ct. App. 2018).

Recordation statute (§ 89-3-1) applies to any instrument affecting title to real property, including substitution of trustee. White v. Delta Foundation, Inc., 481 So. 2d 329, 1985 Miss. LEXIS 2339 (Miss. 1985).

A deed with a defective acknowledgment was not eligible for recordation, and was not effective as to third parties, under § 89-3-1, but it was wholly effective between the parties to it. Cotton v. McConnell, 435 So. 2d 683, 1983 Miss. LEXIS 2737 (Miss. 1983).

Certificate of acknowledgment of a deed is presumed to state the truth. Arnold v. Byrd, 222 So. 2d 410, 1969 Miss. LEXIS 1535 (Miss. 1969).

Delivery necessary to pass title. Lynch v. Lynch, 121 Miss. 752, 83 So. 807, 1920 Miss. LEXIS 119 (Miss. 1920).

Presumption of delivery from record disappears upon showing of no delivery. Lynch v. Lynch, 121 Miss. 752, 83 So. 807, 1920 Miss. LEXIS 119 (Miss. 1920).

Assignment of debt, though in form of deed of trust may be noted on deed of trust record. West v. Union Naval Stores Co., 116 Miss. 743, 77 So. 609, 1917 Miss. LEXIS 347 (Miss. 1917).

Clerk not incompetent to take acknowledgment of bank's general assignment for creditors because indebted to bank. Dodwell v. Rieves, 114 Miss. 4, 74 So. 770, 1917 Miss. LEXIS 4 (Miss. 1917).

A conveyance of personalty absolute on its face, and free from any trust, condition, or reservation, need not be recorded. Thomas v. Grand Gulf Bank, 17 Miss. 201, 1848 Miss. LEXIS 3 (Miss. 1848).

2. Record of defectively acknowledged deed.

Where a deed was first conveyed to a grandson by the decedent, then conveyed back to the estate, then conveyed to the grandson again by the executrix, but the executrix later sought to set aside the deed when the grandson died, notwithstanding the failure to have strictly followed form, the acknowledgment contained all the necessary information and, therefore, was not fatal to the deed's validity; furthermore, it was clear from the deed that the executrix was acting on behalf of the decedent, the grantor, and, thus, there was no ambiguity Estate of Dykes v. Estate of Williams, 864 So. 2d 926, 2003 Miss. LEXIS 759 (Miss. 2003).

In action arising from defendants' alleged negligence and misconduct in conducting substituted trustee's foreclosure sale, acknowledgment verifying that person who executed appointment of substituted trustee had, in fact, appeared before notary public and signed document was not fatally defective under § 89-3-1 due to notary's failure to fill in blank space provided for name of person who appeared before him and executed instrument, as such person's identity was readily ascertainable from appointment form itself. Morton v. Resolution Trust Corp., 918 F. Supp. 985, 1995 U.S. Dist. LEXIS 20453 (S.D. Miss. 1995).

Where a warranty deed appeared to have been acknowledged and signed by the mark of a named grantor and the acknowledgment was notarized, but the notary public described the person who signed the deed as a person of altogether different description from that of the named grantor, the deed was properly canceled as a forgery. Arnold v. Byrd, 222 So. 2d 410, 1969 Miss. LEXIS 1535 (Miss. 1969).

A deed which is defectively acknowledged by reason of the fact that word "delivered" was omitted from acknowledgment is good as between the parties. Kelly v. Wilson, 204 Miss. 56, 36 So. 2d 817, 1948 Miss. LEXIS 342 (Miss. 1948).

United States commissioner was not "judge of United States court" within statute authorizing judges of United States courts to acknowledge instruments to be recorded, and hence deed acknowledged by such commissioner was not entitled to be admitted to record in clerk's office. Smith v. McIntosh, 176 Miss. 725, 170 So. 303, 1936 Miss. LEXIS 175 (Miss. 1936).

State, and not federal, statutes determine what officers are competent to take and certify acknowledgments which will entitle instruments to be admitted to record. Smith v. McIntosh, 176 Miss. 725, 170 So. 303, 1936 Miss. LEXIS 175 (Miss. 1936).

Deed admitted to record without proper acknowledgment did not constitute constructive notice to subsequent purchasers for valuable consideration. Smith v. McIntosh, 176 Miss. 725, 170 So. 303, 1936 Miss. LEXIS 175 (Miss. 1936).

Deed not notice to subsequent purchaser where acknowledgment defective so as not to entitle it to be recorded. Tinnin v. Brown, 98 Miss. 378, 53 So. 780, 1910 Miss. LEXIS 74 (Miss. 1910).

Deed not recordable if acknowledgment fail to show its delivery, and if recorded will not impart constructive notice of its existence. Ligon v. Barton, 88 Miss. 135, 40 So. 555, 1906 Miss. LEXIS 122 (Miss. 1906).

An acknowledgment to a trust deed taken before an officer who is himself trustee therein, with power to sell to pay debts, is void and does not entitle the deed to be recorded. Holden v. Brimage, 72 Miss. 228, 18 So. 383, 1894 Miss. LEXIS 142 (Miss. 1894).

Notwithstanding this section [Code 1942, § 856], if one takes a trust deed on land after having read on the record a prior trust deed on the property, though not properly acknowledged, he is not an innocent purchaser. Woods v. Garnett, 72 Miss. 78, 16 So. 390, 1894 Miss. LEXIS 89 (Miss. 1894).

OPINIONS OF THE ATTORNEY GENERAL

Instruments concerning real property should be properly executed and acknowledged before being recorded. Robinson, Jan. 18, 2005, A.G. Op. 04-0612.

RESEARCH REFERENCES

ALR.

Record of instrument without sufficient acknowledgment as notice. 59 A.L.R.2d 1299.

Am. Jur.

66 Am. Jur. 2d, Records and Recording Laws § 68.

1 Am. Jur. Pl & Pr Forms (Rev), Acknowledgments, Forms 1 et seq.

§§ 89-3-3 and 89-3-5. Repealed

Repealed by Laws, 2020, ch. 382, §§ 36 and 37, eff from and after July 1, 2021.

§ 89-3-3. [Codes, Hutchinson's 1848, ch. 42, arts. 1 (1), 5 (3), 6 (1); 1857, ch. 36, art. 28; 1871, § 2310; 1880, § 1217; 1892, § 2464; 1906, § 2798; Hemingway's 1917, § 2299; 1930, § 2136; 1942, § 857; Laws, 1988, ch. 347, § 2, eff from and after July 1, 1988.]

§ 89-3-5. [Codes, 1942, § 857-01; Laws, 1946, ch. 285, § 1.]

Editor's Notes — Former § 89-3-3 provided that conveyances, contracts or agreements to be recorded could be acknowledged or proved before certain individuals.

Former § 89-3-5 related to acknowledgments before commissioned officers of the United States Armed Forces.

§ 89-3-7. Forms of acknowledgment.

(1) The following long forms of acknowledgment may be used in the case of conveyances or other written instruments affecting real or personal property; and any acknowledgment so taken and certified shall be sufficient to satisfy all requirements of law:

(a) In the case of natural persons acting in their own right:

"STATE OF ______________
COUNTY OF ______________

Personally appeared before me, the undersigned authority in and for the said county and state, on this ________ day of ________, 20 ________, within my jurisdiction, the within named ________, who acknowledged that (he) (she) (they) executed the above and foregoing instrument.

____
(Signature of notarial officer)

____
(Title of office)

My commission expires:
______________"
(Affix official seal, if applicable)

(b) In the case of corporations:

"STATE OF ______________
COUNTY OF ______________

Personally appeared before me, the undersigned authority in and for the said county and state, on this ________ day of ________, 20 ________, within my jurisdiction, the within named ________, who acknowledged that (he) (she) is ________ of ________, a ________ corporation, and that for and on behalf of the said corporation, and as its act and deed (he) (she) executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

____
(Signature of notarial officer)

____
(Title of office)

My commission expires:
______________"
(Affix official seal, if applicable)

(c) In the case of a corporate general partner of a limited partnership:

"STATE OF ______________

COUNTY OF ________________

Personally appeared before me, the undersigned authority in and for the said county and state, on this________ day of________, 20________, within my jurisdiction, the within named________, who acknowledged to me that (he) (she) is________ of________, a ________ corporation and general partner of________, a________ limited partnership, and that for and on behalf of said corporation as general partner of said limited partnership, and as the act and deed of said corporation as general partner of said limited partnership, and as the act and deed of said limited partnership, (he) (she) executed the above and foregoing instrument, after first having been duly authorized by said corporation and said limited partnership so to do.

____
(Signature of notarial officer)

____
(Title of office)

My commission expires:
________________"
(Affix official seal, if applicable)

(d) In the case of a corporate member of a member-managed limited liability company:

"STATE OF ________________
COUNTY OF ________________

Personally appeared before me, the undersigned authority in and for the said county and state, on this________ day of ________, 20________, within my jurisdiction, the within named ________, who acknowledged to me that (he) (she) is ________ of ________, a ________ corporation and member of ________, a ________ member-managed limited liability company, and that for and on behalf of said corporation as member of said limited liability company, and as the act and deed of said corporation as member of said limited liability company, and as the act and deed of said limited liability company, (he) (she) executed the above and foregoing instrument, after first having been duly authorized by said corporation and said limited liability company so to do.

____
(Signature of notarial officer)

____
(Title of office)

My commission expires:
________________"
(Affix official seal, if applicable)

(e) In the case of a corporate manager of a manager-managed limited liability company:

"STATE OF ________________
COUNTY OF ________________

Personally appeared before me, the undersigned authority in and for the said county and state, on this________ day of________, 20________, within my jurisdiction, the within named________, who acknowledged to me that (he) (she) is________ of________, a ________ corporation and manager of________, a________ manager-managed limited liability company, and that for and on behalf of said corporation as manager of said limited liability company, and as the act and deed of said corporation as manager of said limited liability company, and as the act and deed of said limited liability company, (he) (she) executed the above and foregoing instrument, after first having been duly authorized by said corporation and said limited liability company so to do.

____
(Signature of notarial officer)

____
(Title of office)

My commission expires:
________________"
(Affix official seal, if applicable)

(f) In the case of persons acting in representative capacities:

"STATE OF ________________
COUNTY OF ________________

Personally appeared before me, the undersigned authority in and for the said county and state, on this ________ day of ________, 20________, within my jurisdiction, the within named ________, who acknowledged that (he) (she) is ________ of ________ and that in said representative capacity (he) (she) executed the above and foregoing instrument, after first having been duly authorized so to do.

____
(Signature of notarial officer)

____
(Title of office)

My commission expires:
________________"
(Affix official seal, if applicable)

(g) In the case of proof of execution of the instrument made by a subscribing witness:

"STATE OF ________________
COUNTY OF ________________

Personally appeared before me, the undersigned authority in and for the said county and state, on this ________ day of ________, 20________, within my jurisdiction, CD, one of the subscribing witnesses to the above and foregoing instrument, who, being first duly sworn, states that (he) (she) saw the within (or above) named AB, whose name is subscribed thereto, sign and deliver the same to EF (or that (he) (she) heard AB acknowledge that (he) (she) signed and delivered the same to EF); and that the affiant subscribed (his) (her) name as witness thereto in the presence of AB.

____
(Signature of notarial officer)

____
(Title of office)

My commission expires:
________________"
(Affix official seal, if applicable)

(h) In the case of any business organization, foreign or domestic:

"STATE OF ________________
COUNTY OF ________________

Personally appeared before me, the undersigned authority in and for the said county and state, on this ________ day of ________, 20 ________, within my jurisdiction, the within named ________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed in the above and foregoing instrument and acknowledged that he/she/they executed the same in his/her/their representative capacity(ies), and that by his/her/their signature(s) on the instrument, and as the act and deed of the person(s) or entity(ies) upon behalf of which he/she/they acted, executed the above and foregoing instrument, after first having been duly authorized so to do.

____
(Signature of notarial officer)

____
(Title of office)

My commission expires:
________________"
(Affix official seal, if applicable)

(2) The following short form certificates of notarial acts are sufficient for the purposes indicated if the certificate complies with Section 25-34-31(1) and (2):

(a) For an acknowledgment in an individual capacity:

"STATE OF ________________
COUNTY OF ________________

This record was acknowledged before me on (date) by (name(s) of individual(s)).

____
(Signature of notarial officer)

____
(Title of office)

My commission expires:
________________"
(Affix official seal, if applicable)

(b) For an acknowledgment in a representative capacity:

"STATE OF ______________
COUNTY OF ______________
This record was acknowledged before me on (date) by (name(s) of individual(s)) as (type of authority, such as officer or trustee) of (name of party on behalf of whom record was executed).

____
(Signature of notarial officer)

____
(Title of office)

My commission expires:
______________"
(Affix official seal, if applicable)

(c) For a verification on oath or affirmation (jurat):

"STATE OF ______________
COUNTY OF ______________
Signed and sworn to (or affirmed) before me on (date) by (name(s) of individual(s) making statement).

____
(Signature of notarial officer)

____
(Title of office)

My commission expires:
______________"
(Affix official seal, if applicable)

(d) For witnessing or attesting a signature:

"STATE OF ______________
COUNTY OF ______________
Signed or attested before me on (date) by (name(s) of individual(s)).

____
(Signature of notarial officer)

____
(Title of office)

My commission expires:
______________"
(Affix official seal, if applicable)

HISTORY: Codes, 1892, § 2465; 1906, § 2799; Hemingway's 1917, § 2300; 1930, § 2137; 1942, § 858; Laws, 1988, ch. 475, § 1; Laws, 1992, ch. 354 § 1; Laws, 2000, ch. 446, § 1; Laws, 2011, ch. 538, § 1, eff from and after July 1, 2011; Laws, 2020, ch. 382, § 32, eff from and after July 1, 2021.

Editor's Notes — Section 2, ch. 475, Laws of 1988, effective from and after July 1, 1988, provides as follows:

"SECTION 2. Acknowledgments in the forms permitted under prior law shall continue to be sufficient to satisfy all requirements of law."

Amendment Notes — The 2020 amendment, effective July 1, 2021, in (1), in the introductory paragraph, inserted "long" near the beginning, and deleted "estate" following "instruments affecting real," and in (a) through (h), substituted "(Signature of notarial officer)" for "(NOTARY PUBLIC)," and added "(Title of office)"; and added (2).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Conveyance of corporate or partnership property.
3. Impeachment of acknowledgment.
4. Defective acknowledgment.
5. Miscellaneous.

1. In general.

Where a deed was first conveyed to a grandson by the decedent, then conveyed back to the estate, then conveyed to the grandson again by the executrix, but the executrix later sought to set aside the deed when the grandson died, notwithstanding the failure to have strictly followed form, the acknowledgment contained all the necessary information and, therefore, was not fatal to the deed's validity; furthermore, it was clear from the deed that the executrix was acting on behalf of the decedent, the grantor, and, thus, there was no ambiguity Estate of Dykes v. Estate of Williams, 864 So. 2d 926, 2003 Miss. LEXIS 759 (Miss. 2003).

There was no ambiguity or disabling defect in an acknowledgment which recited that the grantors "acknowledged that they signed and delivered to the foregoing deed," so as to divest its recordation of its efficacy as constructive notice. Davis v. Gulf Refining Co., 202 Miss. 808, 32 So. 2d 133, 1947 Miss. LEXIS 344 (Miss. 1947).

Attestation by a single witness is sufficient, and a substantial compliance with the statutory form is all that is required. White v. Union Producing Co., 140 F.2d 176, 1944 U.S. App. LEXIS 3896 (5th Cir. 1944).

Where proof of the execution of a colessor's agreement was made in the manner required by law before an officer competent to take the same, and was duly certified to by him, the certificate, showing full compliance with the statute, is conclusive of the facts, except in cases of fraud; and if there was no fraud in procuring the execution of the instrument, there is none in making proof of its execution and having it filed for record. White v. Union Producing Co., 140 F.2d 176, 1944 U.S. App. LEXIS 3896 (5th Cir. 1944).

The officer who has properly exercised the judicial function of taking an acknowledgment, may perform the clerical act of making the certificate at any time while he remains in office, if rights of third persons do not intervene. Harmon v. Magee, 57 Miss. 410, 1879 Miss. LEXIS 94 (Miss. 1879).

The certificate of acknowledgment cannot be enlarged by averment. Willis v. Gattman, 53 Miss. 721, 1876 Miss. LEXIS 141 (Miss. 1876).

A certificate showing a full compliance with the statute, except in cases of fraud, is conclusive of the facts. Johnston v. Wallace, 53 Miss. 331, 1876 Miss. LEXIS 72 (Miss. 1876).

The term "executed," when used in the acknowledgment of an instrument, imports "signing, sealing, and delivery." Smith v. Williams, 38 Miss. 48, 1859 Miss. LEXIS 92 (Miss. 1859); Perkins, Livingston & Post v. Swank, 43 Miss. 349, 1870 Miss. LEXIS 46 (Miss. 1870).

The description of an officer need not be fully stated-abbreviations may be used; And it seems that evidence aliunde may be heard to show the official character of the officer. Russ v. Wingate, 30 Miss. 440, 1855 Miss. LEXIS 116 (Miss. 1855).

Substantial compliance with the form, even in cases of witnesses, is sufficient. Morse v. Clayton, 21 Miss. 373, 1850 Miss. LEXIS 31 (Miss. 1850).

A deed attested by a single witness is rightfully admitted to record on proof made by him. Wilkins v. Wells, 17 Miss. 325, 1848 Miss. LEXIS 18 (Miss. 1848); Morris v. Rucks, 62 Miss. 76, 1884 Miss. LEXIS 23 (Miss. 1884).

2. Conveyance of corporate or partnership property.

Official acknowledgment for public record of corporate document should in some manner make it clear that it is corporation executing instrument by and through authorized officer, officers, or agent. White v. Delta Foundation, Inc., 481 So. 2d 329, 1985 Miss. LEXIS 2339 (Miss. 1985).

The fact that defendant's agent in procuring colessor's agreement was employed at a fixed salary did not disqualify him to act as a nonofficial subscribing witness or to make proof of the execution of such agreement, where he had no pecuniary interest in the matter. White v. Union Producing Co., 140 F.2d 176, 1944 U.S. App. LEXIS 3896 (5th Cir. 1944).

Deed signed and acknowledged by corporation's president and attested by secretary under seal held sufficient. Griffis v. Martin Oil Co., 127 Miss. 606, 90 So. 324, 1921 Miss. LEXIS 263 (Miss. 1921).

One partner cannot acknowledge deed to partnership property unless his authority affirmatively appears. Tinnin v. Brown, 98 Miss. 378, 53 So. 780, 1910 Miss. LEXIS 74 (Miss. 1910).

3. Impeachment of acknowledgment.

A certificate of acknowledgment may be shown to be a fraud and a forgery. T. H. & J. M. Allen & Co. v. Lenoir, 53 Miss. 321, 1876 Miss. LEXIS 71 (Miss. 1876).

The officer who makes the certificate is incompetent as a witness to impeach it. Stone v. Montgomery, 35 Miss. 83, 1858 Miss. LEXIS 9 (Miss. 1858).

4. Defective acknowledgment.

Instrument will not necessarily be deemed fatally deficient on basis of omission from acknowledgment where omission can be remedied by reference to body of instrument itself. White v. Delta Foundation, Inc., 481 So. 2d 329, 1985 Miss. LEXIS 2339 (Miss. 1985).

A deed which is defectively acknowledged by reason of the fact that word "delivered" was omitted from acknowledgment is good as between the parties. Kelly v. Wilson, 204 Miss. 56, 36 So. 2d 817, 1948 Miss. LEXIS 342 (Miss. 1948).

Acknowledgment of power of attorney which failed to show acknowledgment of delivery of power, held void. Lucas v. New Hebron Bank, Inc., 181 Miss. 762, 180 So. 611, 1938 Miss. LEXIS 116 (Miss. 1938).

Trust created by deed not acknowledged according to law was void; trustees thereunder not entitled to maintain suit to remove cloud on theory that upon failure of trust conveyance to them was absolute. Board of Trustees v. Odom, 100 Miss. 64, 56 So. 314, 1911 Miss. LEXIS 15 (Miss. 1911).

Deed not constructive notice to subsequent purchasers where acknowledgment fatally defective. Tinnin v. Brown, 98 Miss. 378, 53 So. 780, 1910 Miss. LEXIS 74 (Miss. 1910).

Record of deed not notice when acknowledgment omits word "delivered." Ligon v. Barton, 88 Miss. 135, 40 So. 555, 1906 Miss. LEXIS 122 (Miss. 1906).

Acknowledgment which does not state that grantor executed or delivered deed is fatally bad; such deed not entitled to record and not constructive notice. Elmslie v. Thurman, 87 Miss. 537, 40 So. 67, 1905 Miss. LEXIS 179 (Miss. 1905).

Lease not entitled to record because of improper acknowledgment, not ineffective against subsequent grantees with actual notice. Ladnier v. Stewart, 38 So. 748 (Miss. 1905).

The omission of the words "on the day and year therein mentioned," was not, under former statute, a material defect in an acknowledgment. Caruthers v. McLaran, 56 Miss. 371, 1879 Miss. LEXIS 132 (Miss. 1879).

An acknowledgment that one simply "signed" a deed is not sufficient. Robinson v. Noel, 49 Miss. 253, 1873 Miss. LEXIS 112 (Miss. 1873).

5. Miscellaneous.

Intention to deliver deed does not dispense with manual delivery. Lynch v. Lynch, 121 Miss. 752, 83 So. 807, 1920 Miss. LEXIS 119 (Miss. 1920).

Parol evidence admissible to show grantee of land had notice of prior lease.

Ladnier v. Stewart, 38 So. 748 (Miss. 1905).

RESEARCH REFERENCES

ALR.

Written matter as controlling printed matter in construction of deed. 37 A.L.R.2d 820.

Am. Jur.

1A Am. Jur. Legal Forms 2d, Acknowledgments § 7:348 (subscribing witnesses).

7 Am. Jur. Legal Forms 2d, Deeds §§ 87:261 et seq. (formalities of execution).

Law Reviews.

Marcase, The absence of a signature requirement in Mississippi notary law: fraud waiting to happen. 13 Miss. C. L. Rev. 371 (Spring, 1993).

§§ 89-3-9 through 89-3-15. Repealed.

Repealed by Laws, 2020, ch. 382, §§ 38 through 41, eff from and after July 1, 2021.

§ 89-3-9. [Codes, Hutchinson's 1848, ch. 42, arts. 1 (13), 6 (1); 1857, ch. 36, art. 29; 1871, § 2312; 1880, § 1219; 1892, § 2466; 1906, § 2800; Hemingway's 1917, § 2301; 1930, § 2138; 1942, § 859; Laws, 1948, ch. 227, § 1.]

§ 89-3-11. [Codes, 1942, § 859.5.]

§ 89-3-13. [Codes, Hutchinson's 1848, ch. 42, art. 1 (14); 1857, ch. 36, art. 30; 1871, § 2313; 1880, § 1220; 1892, § 2467; 1906, § 2801; Hemingway's 1917, § 2302; 1930, § 2139; 1942, § 860.]

§ 89-3-15. [Codes, Hutchinson's 1848, ch. 42, art. 1 (16); 1857, ch. 36, art. 31; 1871, § 2314; 1880, § 1221; 1892, § 2468; 1906, § 2802; Hemingway's 1917, § 2303; 1930, § 2140.]

Editor's Notes — Former § 89-3-9 related to acknowledgment or proof in another state.

Former § 89-3-11 related to construction and application of §§ 89-3-9 and 83-9-11 as to prior out-of-state acknowledgments or proof.

Former § 89-3-13 related to acknowledgment or proof in a foreign country.

Former § 89-3-15 related to proof when a grantor or witness is dead or absent.

CHAPTER 5.

RECORDING OF INSTRUMENTS

Article 1.	General Provisions.	89-5-1
Article 3.	Uniform Real Property Electronic Recording Act.	89-5-101

ARTICLE 1.

GENERAL PROVISIONS.

Sec.	
89-5-1.	Recording instruments; conveyances, acknowledgment, priority.
89-5-3.	Conveyances, mortgages; void if not lodged for record.
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89-5-45.	Substitution of trustee must appear of record; general substitution allowed for certain beneficiaries.
89-5-47 through 89-5-53.	Repealed.

§ 89-5-1. Recording instruments; conveyances, acknowledgment, priority.

Except as provided by Sections 89-5-101 through 89-5-113, a conveyance of land shall not be good against a purchaser for a valuable consideration without notice, or any creditor, unless it be lodged with the clerk of the chancery court of the county in which the lands are situated to be recorded; but after filing with the clerk, the priority of time of filing shall determine the priority of all conveyances of the same land as between the several holders of such conveyances.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (1); 1857, ch. 36, art. 19; 1871, § 2304; 1880, § 1209; 1892, § 2454; 1906, § 2784; Hemingway's 1917, § 2288; 1930, § 2146; 1942, § 867; Laws, 1924, ch. 239; Laws, 2011, ch. 364, § 9; Laws, 2011, ch. 538, § 3, eff from and after July 1, 2011.

Joint Legislative Committee Note — Section 9 of ch. 364, Laws of 2011, effective from and after July 1, 2011 (approved March 11, 2011), amended this section. Section 3 of ch. 538, Laws of 2011, effective July 1, 2011 (approved April 26, 2011), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 538, Laws of 2011, which contains language that specifically provides that it supersedes § 89-5-1 as amended by Laws of 2011, ch. 364.

Cross References — Filing and recording of secured transactions under the Uniform Commercial Code, see §§ 75-9-401 et seq.

Payment of insurance to mortgagees in order of priority, see § 83-13-7.

Recording of federal tax liens and other federal lien notices, see § 85-8-1 et seq.

Racketeer Influenced and Corrupt Organization Act, see §§ 97-43-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Applicability to wills.
3. Actual possession as notice.
4. Deeds of trust.
5. Lis pendens.
6. Intervening judgments.
7. Miscellaneous.

1. In general.

Title need not be recorded to bind bona fide purchaser from original owner; purchaser from record owner must ascertain existence of adverse possession hostile thereto. Lowi v. David, 134 Miss. 296, 98 So. 684, 1924 Miss. LEXIS 255 (Miss. 1924).

Deed takes effect as to subsequent purchasers and creditors without notice only from time delivered to be recorded; whether subsequent deed or lien be filed or recorded or not is immaterial. Craig v. Osborn, 134 Miss. 323, 98 So. 598, 1923 Miss. LEXIS 244 (Miss. 1923).

Purchasers for value without notice from grantor's heirs entitled to same protection as if purchasing directly from grantor. Reddoch v. Williams, 129 Miss. 706, 92 So. 831, 1922 Miss. LEXIS 84 (Miss. 1922).

Constructive notice begins moment deed is lodged with proper officer for record, and failure of clerk to mark filed when received is immaterial. Sowell v. Rankin, 120 Miss. 458, 82 So. 317, 1919 Miss. LEXIS 108 (Miss. 1919).

Deed not constructive notice to subsequent purchasers where acknowledgment so defective as not to entitle it to record. Tinnin v. Brown, 98 Miss. 378, 53 So. 780, 1910 Miss. LEXIS 74 (Miss. 1910).

The mere acknowledgment that a party signed a deed, which was not in fact signed by her, is invalid as a transfer. Jones v. Gurlie, 61 Miss. 423, 1883 Miss. LEXIS 153 (Miss. 1883).

2. Applicability to wills.

Statute making "conveyances" void as to purchasers for value without notice of lands in any county wherein conveyance is not recorded held inapplicable to "wills." Federal Land Bank v. Newsom, 175 Miss. 114, 161 So. 864, 166 So. 345, 1935 Miss. LEXIS 27 (Miss. 1935).

Probate and record of domestic will in county where testator resided constituted notice throughout state to subsequent mortgagee of land, without necessity of recording will in county where land situated. Federal Land Bank v. Newsom, 175 Miss. 114, 161 So. 864, 166 So. 345, 1935 Miss. LEXIS 27 (Miss. 1935).

3. Actual possession as notice.

An owner in possession by himself or by his tenants is not affected by this statute, his actual possession being all of the notice necessary to any prospective purchaser. Gulf Refining Co. v. Travis, 201 Miss. 336, 29 So. 2d 100, 1947 Miss. LEXIS 399 (Miss. 1947).

Purchaser charged with notice of rights of tenant in possession. Frye v. Rose, 120 Miss. 778, 83 So. 179, 1919 Miss. LEXIS 131 (Miss. 1919).

4. Deeds of trust.

Defectively acknowledged deed of trust was ineligible for recordation under § 89-5-1, however, fact that it was recorded constituted actual notice to subsequent purchasers of the interest claimed under defective deed of trust such that federal tax lien which attached subsequent to erroneous recordation of defective deed of trust was subordinate thereto. Metropolitan Nat'l Bank v. United States, 716 F. Supp. 946, 1989 U.S. Dist. LEXIS 7664 (S.D. Miss. 1989).

A recorded deed of trust, containing an erroneous description of the land conveyed by the grantor, which recited that the land in question contained 60 acres more or less, whereas the grantor only owned 40 acres, was not sufficient to put the grantor's judgment creditors on notice that an entirely different tract of land was intended to be included, and did not give notice of a description which a diligent search of the records might have disclosed as to other lands belonging to the grantor, so that while the grantee was entitled to a reformation of a trust deed as against the grantor, he was not so entitled as against the judgment creditors, who had executed on the land actually owned by the grantor. Mississippi Industries for Blind v. Jackson, 231 Miss. 135, 95 So. 2d 109, 1957 Miss. LEXIS 496 (Miss. 1957).

5. Lis pendens.

The filing of a notice of lis pendens in an action before the recordation of a prior deed is effective to make a judgment recovered against the grantor after such recordation a lien on the property conveyed. Jones v. Jones, 249 Miss. 322, 161 So. 2d 640, 1964 Miss. LEXIS 393 (Miss. 1964).

6. Intervening judgments.

A judgment enrolled on January 3, 1961, within 20 days after its rendition, did not relate back to the date of its rendition, December 13, 1960, to give the judgment creditor a specific lien on property which the judgment debtor had conveyed to third parties on November 29, 1960, the deed being filed for record on December 14, 1960. Herrington v. Heidelberg, 244 Miss. 364, 141 So. 2d 717, 1962 Miss. LEXIS 456 (Miss. 1962).

In view of the provisions of the statute (Howard & H. Stat. 1840, ch. 34, p. 344, § 5) requiring the recording of an instrument to make it effective as against third persons, a judgment rendered in the interval between the execution and the recording of a deed is a lien upon the land of the debtor. Taylor v. Doe, 54 U.S. 287, 14 L. Ed. 149, 1851 U.S. LEXIS 860 (U.S. 1852).

7. Miscellaneous.

The recording of an instrument does not put any subsequent purchaser on inquiry notice. C & D Inv. Co. v. Gulf Transport Co., 526 So. 2d 526, 1988 Miss. LEXIS 246 (Miss. 1988).

Certificate of acknowledgment of a deed is presumed to state the truth. Arnold v. Byrd, 222 So. 2d 410, 1969 Miss. LEXIS 1535 (Miss. 1969).

Mortgagee loaning money for the purchase of lots and construction of houses thereon should advance proceeds with reasonable diligence in order that holders of statutory liens may not be unjustly defeated in their claims. First Nat'l Bank v. Virden, 208 Miss. 679, 45 So. 2d 268, 1950 Miss. LEXIS 285 (Miss. 1950).

Mortgagee who makes loan to mortgagor to enable him to purchase land and materials and lumber for the construction of houses thereon and turns money over to mortgagor as he asks for it, knowing that houses are being constructed, but doing nothing to see that such construction is being paid for, has preference over materialmen only to extent that its funds actually go into the construction, when mortgagor fails to use all money advanced by mortgagee for payment of those furnishing materials. First Nat'l Bank v. Virden, 208 Miss. 679, 45 So. 2d 268, 1950 Miss. LEXIS 285 (Miss. 1950).

This section [Code 1942, § 867] and Code 1942, §§ 868 and 869 are inapplicable where a grantee accepts a conveyance of certain mineral interests, which conveyance is expressly made subject to any valid and subsisting leases and further obligates the grantor to permit the grantee to receive half of the benefits accruing or to accrue under such leases. Gulf Refining Co. v. Harrison, 201 Miss. 294, 30 So. 2d 44, 1947 Miss. LEXIS 397 (Miss. 1947).

Purchaser held entitled under statute to value of house built during his possession of land in good faith belief that he had full title, as against heirs of wife of his remote grantor who owned a half interest, irrespective of his constructive notice of their rights by recorded deed in the chain of title. Brunt v. McLaurin, 178 Miss. 86, 172 So. 309, 1937 Miss. LEXIS 181 (Miss. 1937).

Deed of trust covering land and ginning machinery and "equipment" did not include seed house constructed on leased railroad right of way. Y. D. Lumber Co. v. Refuge Cotton Oil Co., 153 Miss. 302, 120 So. 447, 1929 Miss. LEXIS 11 (Miss. 1929).

Conveyance is not good against purchaser for value without notice, unless acknowledged or proven and lodged with clerk to be recorded; deed not lodged with clerk to be recorded is void as to subsequent purchaser without notice, even though holder has it filed after subsequent conveyance is executed. Owen v. Potts, 149 Miss. 205, 115 So. 336, 1928 Miss. LEXIS 23 (Miss. 1928).

U.S. revenue laws making invalid unstamped written instruments do not make such instruments unrecordable. Sowell v. Rankin, 120 Miss. 458, 82 So. 317, 1919 Miss. LEXIS 108 (Miss. 1919).

Notice not given where particular trust deed under which sale is made is referred to, which as recorded has on its face no pertinency to the actual sale, even if referred to by proper deed book and page. Provine v. Thornton, 92 Miss. 395, 46 So. 950, 1908 Miss. LEXIS 253 (Miss. 1908).

RESEARCH REFERENCES

ALR.

Title by adverse possession as affected by recording statutes. 9 A.L.R.2d 850.

Discharge of mortgage and taking back of new mortgage as affecting lien intervening between old and new mortgages. 43 A.L.R.5th 519.

Am. Jur.

21 Am. Jur. Pl & Pr Forms (Rev), Records and Recording Laws, Forms 1 et seq.

Law Reviews.

The effect of bankruptcy and encumbrances on mineral interests in Mississippi. 53 Miss. L. J. 551, December, 1983.

§ 89-5-3. Conveyances, mortgages; void if not lodged for record.

Except as provided by Sections 89-5-101 through 89-5-113, all bargains and sales, and all other conveyances whatsoever of lands, whether made for passing an estate of freehold or inheritance, or for a term of years; and all instruments of settlement upon marriage wherein land, money, or other personalty should be settled or covenanted to be left or paid at the death of the party, or otherwise; and all deeds of trust and mortgages whatsoever, shall be void as to all creditors and subsequent purchasers for a valuable consideration without notice, unless they be acknowledged or proved and lodged with the clerk of the chancery court of the proper county, to be recorded in the same manner that other conveyances are required to be acknowledged or proved and recorded. Failure to file such instrument with the clerk for record shall prevent any claim of priority by the holder of such instrument over any similar recorded instrument affecting the same property, to the end that with reference to all instruments which may be filed for record under this section, the priority thereof shall be governed by the priority in time of the filing of the several instruments, in the absence of actual notice. But as between the parties and their heirs, and as to all subsequent purchasers with notice or without valuable consideration, said instruments shall nevertheless be valid and binding.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (2), (3); 1857, ch. 36, arts. 20, 21; 1871, §§ 2303, 2306; 1880, §§ 1211, 1212; 1892, §§ 2456, 2457; 1906, §§ 2786, 2787; Hemingway's 1917, §§ 2290, 2291; 1930, §§ 2143, 2147; 1942, §§ 864, 868; Laws, 1924, ch. 239; Laws, 2011, ch. 364, § 10, eff from and after July 1, 2011.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the first sentence by substituting "wherein land, money, or other personalty should be settled…" for "wherein land, money, or other personality should be settled…." The Joint Committee ratified the correction at its August 1, 2013, meeting.

Cross References — Recording of partition decrees, see § 11-21-37.

Effect of failure to enter notice of lis pendens, see § 11-47-9.

Constructive notice provided by lost or destroyed records, see § 25-55-31.

Recording of satisfaction by surety of judgment, see § 87-5-11.

Acknowledgment and proof generally, see §§ 89-3-3 et seq.

Recording of decree establishing title to property by descent, see § 91-1-31.

Recording notice of power of appointment, see § 91-15-15.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Who may claim benefit of provision.
3. Record of void instrument.
4. Effect of failure to record or delay in recording.
5. Miscellaneous.

1. In general.

The purpose of the registry statute is that the record shall contain complete information about titles to land located in the county, and to effectuate this purpose, the courts should require and authorize the recording of equitable as well as legal interests. Burkett v. Peoples Bank of Biloxi, 225 Miss. 291, 83 So. 2d 185, 1955 Miss. LEXIS 688 (Miss. 1955).

This section [Code 1942, § 868] and Code 1942, §§ 867 and 869, are inapplicable where a grantee accepts a conveyance of certain mineral interests, which conveyance is expressly made subject to any valid and subsisting leases and further obligates the grantor to permit the grantee to receive half of the benefits accruing or to accrue under such leases. Gulf Refining Co. v. Harrison, 201 Miss. 294, 30 So. 2d 44, 1947 Miss. LEXIS 397 (Miss. 1947).

Statute making conveyances void if not recorded is inapplicable to wills. Federal Land Bank v. Newsom, 175 Miss. 114, 161 So. 864, 166 So. 345, 1935 Miss. LEXIS 27 (Miss. 1935).

This section [Code 1942, § 868] held not superseded by Uniform Warehouse Receipts Law. Marine Bank & Trust Co. v. Greeville Sav. Bank & Trust Co., 133 Miss. 91, 97 So. 526, 1923 Miss. LEXIS 120 (Miss. 1923).

This statute applies with as much force with proper officer for record, and failure of clerk to mark filed is immaterial. Sowell v. Rankin, 120 Miss. 458, 82 So. 317, 1919 Miss. LEXIS 108 (Miss. 1919).

This section [Code 1942, § 868] applied in bankruptcy. Laurel Oil & Fertilizer Co. v. Horne, 101 Miss. 629, 57 So. 624, 58 So. 652, 1911 Miss. LEXIS 124 (Miss. 1911).

2. Who may claim benefit of provision.

This statute applies with as much force to a creditor obtaining a lien by judgment as it does to a subsequent purchaser or encumbrancer, and creditors without notice and subsequent purchasers for value without notice are in the same footing and are protected to the same extent. Burkett v. Peoples Bank of Biloxi, 225 Miss. 291, 83 So. 2d 185, 1955 Miss. LEXIS 688 (Miss. 1955).

"Creditor" or "subsequent purchaser" within statute providing that recorded lien should have no effect as to "creditors" and "subsequent purchasers" where remedy thereon was barred by limitations unless renewal or extension is entered on record is person who has parted with something of value on appearance of record, so that apparent bar cannot be availed of by one who became junior lienor before bar attached, and while notice imparted by recorded instrument was in full force. Richter Phillips Co. v. Phillips, 175 Miss. 242, 166 So. 393, 1936 Miss. LEXIS 26 (Miss. 1936).

Person who became judgment creditor of mortgagor, before bar of limitations against enforcement of lien by mortgagee appeared of record, held not "creditor" or "subsequent purchaser" within statute. Richter Phillips Co. v. Phillips, 175 Miss. 242, 166 So. 393, 1936 Miss. LEXIS 26 (Miss. 1936).

Purchasers for value without notice from grantor's heirs are entitled to same protection as if purchasing directly from grantor. Reddoch v. Williams, 129 Miss. 706, 92 So. 831, 1922 Miss. LEXIS 84 (Miss. 1922).

A purchaser from a vendee of lands may rely on the recitals in the deeds as to payments. Hiller v. Jones, 66 Miss. 636, 6 So. 465, 1889 Miss. LEXIS 158 (Miss. 1889).

The creditors embraced are those who have obtained a lien. Loughridge & Bogan v. Bowland, 52 Miss. 546, 1876 Miss. LEXIS 254 (Miss. 1876).

A purchaser at execution sale is not affected by notice of an unrecorded deed if the judgment-creditor had no notice thereof when his lien attached. Harper v. Tapley, 35 Miss. 506, 1858 Miss. LEXIS 51 (Miss. 1858); Taylor v. Lowenstein, 50 Miss. 278, 1874 Miss. LEXIS 56 (Miss. 1874); Humphreys v. Merrill, 52 Miss. 92, 1876 Miss. LEXIS 171 (Miss. 1876); Perry Nugent & Co. v. Priebatsch, 61 Miss. 402, 1883 Miss. LEXIS 147 (Miss. 1883).

"Purchasers for a valuable consideration" designate that class of persons who have been declared to be such by the courts. Wailes v. Cooper, 24 Miss. 208, 1852 Miss. LEXIS 42 (Miss. 1852); Claiborne v. Holmes, 51 Miss. 146, 1875 Miss. LEXIS 26 (Miss. 1875).

Subsequent purchasers mean purchasers from the grantors directly. Sessions v. Doe, 15 Miss. 130, 1846 Miss. LEXIS 131 (Miss. 1846); Henderson v. Downing, 24 Miss. 106, 1852 Miss. LEXIS 18 (Miss. 1852); Mississippi Valley Co. v. Chicago, S. L. & N. O. R. Co., 58 Miss. 846, 1881 Miss. LEXIS 53 (Miss. 1881); Chaffe v. Halpin & Bonham, 62 Miss. 1, 1884 Miss. LEXIS 1 (Miss. 1884).

Under this statute creditors, as well as subsequent purchasers, are affected by notice of a prior, unrecorded deed. Dixon & Starkey v. Doe, 9 Miss. 70, 1843 Miss. LEXIS 145 (Miss. 1843).

3. Record of void instrument.

Warranty deed which was filed in the wrong judicial district was void as to a utility because the utility acquired its interest to the subject real property in a quick-take condemnation action without notice of the misfiled deed. Harrison County Util. Auth. v. Walker, 143 So. 3d 608, 2014 Miss. App. LEXIS 19 (Miss. Ct. App.), cert. denied, 141 So. 3d 947, 2014 Miss. LEXIS 386 (Miss. 2014).

Recordation of a deed or mortgage containing a void description does not meet the requirements of the statute. In re Tucker, 1 F. Supp. 18, 1932 U.S. Dist. LEXIS 1649 (D. Miss. 1932); Sack v. Gilmer Dry Goods Co., 149 Miss. 296, 115

So. 339, 1928 Miss. LEXIS 24 (Miss. 1928).

Unsigned recorded deed not notice. Rainey v. Lamb Hardwood Lumber Co., 91 Miss. 690, 45 So. 367, 1907 Miss. LEXIS 178 (Miss. 1907).

Where a mortgage is void on its face the beneficiaries thereof cannot occupy the relation of bona fide purchasers. Acme Lumber Co. v. Hoyt & Bros. Co., 71 Miss. 106, 14 So. 464, 1893 Miss. LEXIS 186 (Miss. 1893).

4. Effect of failure to record or delay in recording.

Decedent's ex-wife was not entitled to execute a judgment against real estate formerly jointly owned by the decedent and his widow but conveyed by four deeds to the widow's sister, although the late-recorded deeds were void as to the ex-wife under Miss. Code Ann. § 89-5-3, because under Miss. Code Ann. § 15-3-101(b)(iii) (Supp. 2010) the property was not subject to a claim against only one joint tenant, and any right the ex-wife had to execute her judgment on the jointly held property ceased to exist upon the decdent's death. Kelly v. Roby (In re Estate of Roby), 84 So. 3d 786, 2011 Miss. App. LEXIS 405 (Miss. Ct. App. 2011).

Unrecorded deed to shopping center voids title of bankruptcy debtor who is to take under deed and shopping center property is therefore not subject to automatic stay in bankruptcy proceeding. In re Pinetree, Ltd., 876 F.2d 34, 1989 U.S. App. LEXIS 9648 (5th Cir. Miss. 1989).

Failure to record an instrument does not affect its efficacy as between the parties thereto, nor does it prevent such an instrument from binding all subsequent purchasers who take either with notice of the instrument or who have not paid valuable consideration. Chevron Oil Co. v. Clark, 291 F. Supp. 552, 1968 U.S. Dist. LEXIS 12565 (S.D. Miss. 1968).

New promise to avoid bar of statute of limitations is not required to be recorded except as to creditors and subsequent purchasers for value without notice. Richter Phillips Co. v. Phillips, 175 Miss. 242, 166 So. 393, 1936 Miss. LEXIS 26 (Miss. 1936).

Deed or mortgage, unless recorded, is void as to creditor obtaining lien by judgment. Sack v. Gilmer Dry Goods Co., 149 Miss. 296, 115 So. 339, 1928 Miss. LEXIS 24 (Miss. 1928).

Mortgagee for value without notice, not chargeable with unrecorded assignment of lease. Corinth Bank & Trust Co. v. Wallace, 111 Miss. 62, 71 So. 266, 1916 Miss. LEXIS 241 (Miss. 1916).

Enrolled judgment good against subsequently recorded deed from husband to wife. Austin Clothing Co. v. Posey, 105 Miss. 720, 63 So. 224, 1913 Miss. LEXIS 275 (Miss. 1913).

Execution sale of land good against prior unrecorded deed. Levis-Zukoski Mercantile Co. v. McIntyre, 93 Miss. 806, 47 So. 435, 1908 Miss. LEXIS 140 (Miss. 1908).

Under this section [Code 1942, § 868], taken in connection with Code 1942, § 869, where a trust deed is made to one who fails to record it until after another has received and recorded a trust deed on the same land, the latter having knowledge of the first deed, the purchaser under the last, though having no actual knowledge of the facts, is not protected as against the prior deed, if at the time of his purchase it had been recorded. Woods v. Garnett, 72 Miss. 78, 16 So. 390, 1894 Miss. LEXIS 89 (Miss. 1894).

5. Miscellaneous.

Appellate and chancery courts erred by finding that decedent never accepted reconveyance of six deeds from his sister, and therefore the six properties belonged to the decedent at the time of his death, because the evidence showed that the decedent took possession of the deeds after his sister reconveyed them to him, he paid taxes and insurance on the properties, made repairs and improvements on the properties, and collected rent on the properties. Green v. Cooley (In re Estate of Green), 306 So. 3d 665, 2020 Miss. LEXIS 358 (Miss. 2020).

Beneficiary deed of trust was not void because it identified the note, date of the note, and payment schedule, and thus, the beneficiary could, with simple review, have been reasonably certain. Borries v. Goshen Mortgage, 219 So. 3d 593, 2017 Miss. App. LEXIS 276 (Miss. Ct. App. 2017).

If a landowner's spouse and adult child claimed an interest in a property which a utility sought to acquire in a quick-take condemnation action, their claim was against the landowner only because a warranty deed purporting to convey an interest in the subject property was misfiled in the wrong judicial district. Harrison County Util. Auth. v. Walker, 143 So. 3d 608, 2014 Miss. App. LEXIS 19 (Miss. Ct. App.), cert. denied, 141 So. 3d 947, 2014 Miss. LEXIS 386 (Miss. 2014).

Cross-defendant refinancing bank was not entitled to equitable subrogation to step into the original lender's shoes for priority over four cross-defendant judgment creditors because the property was in the debtor/borrower's infant daughter's name until the day of closing and if the bank had inquired of liens under the debtor's name, the judgment creditors' liens would have been found, thus, because the judgment creditors' liens were filed before the refinancing mortgage was filed, and they attached upon the property being reconveyed from the minor back to the debtor, under Miss. Code Ann. §§ 89-5-3, 89-5-25, the bank was last in priority. Shavers v. JPMorgan Chase Bank, N.A. (In re Shavers), 418 B.R. 589, 2009 Bankr. LEXIS 3411 (Bankr. S.D. Miss. 2009).

Defectively acknowledged deed of trust was ineligible for recordation under § 89-5-1, however, fact that it was recorded constituted actual notice to subsequent purchasers of the interest claimed under defective deed of trust such that federal tax lien which attached subsequent to erroneous recordation of defective deed of trust was subordinate thereto. Metropolitan Nat'l Bank v. United States, 716 F. Supp. 946, 1989 U.S. Dist. LEXIS 7664 (S.D. Miss. 1989).

Certificate of acknowledgment of a deed is presumed to state the truth. Arnold v. Byrd, 222 So. 2d 410, 1969 Miss. LEXIS 1535 (Miss. 1969).

In a suit against a notary and his surety for affixing a false notarial certificate of acknowledgment to a deed of trust, proof of the value of the land described in the deed, the amount of prior liens, the fact that security was ample to enable the plaintiff to collect the balance on the note if the deed had been a valid instrument, and that he was otherwise unable to collect, supported a finding that the false notarial certificate was the proximate cause of the plaintiff's damages when default occurred on the note. King v. State, 222 So. 2d 393, 1969 Miss. LEXIS 1531 (Miss. 1969).

A judgment enrolled on January 3, 1961, within 20 days after its rendition, did not relate back to the date of its rendition, December 13, 1960, to give the judgment creditor a specific lien on property which the judgment debtor had conveyed to third parties on November 29, 1960, the deed being filed for record on December 14, 1960. Herrington v. Heidelberg, 244 Miss. 364, 141 So. 2d 717, 1962 Miss. LEXIS 456 (Miss. 1962).

A recorded deed of trust, containing an erroneous description of the land conveyed by the grantor, which recited that the land in question contained 60 acres more or less, whereas the grantor only owned 40 acres, was not sufficient to put the grantor's judgment creditors on notice that an entirely different tract of land was intended to be included, and did not give notice of a description which a diligent search of the records might have disclosed as to other lands belonging to the grantor, so that while the grantee was entitled to a reformation of a trust deed as against the grantor, he was not so entitled as against the judgment creditors, who had executed on the lands actually owned by the grantor. Mississippi Industries for Blind v. Jackson, 231 Miss. 135, 95 So. 2d 109, 1957 Miss. LEXIS 496 (Miss. 1957).

The record of a deed of trust is sufficient to charge creditors and subsequent purchasers with constructive notice of its existence, notwithstanding an error in the description, whenever it is apparent what the error is and the description is such as reasonably to enable creditors and subsequent purchasers to find the land. Burkett v. Peoples Bank of Biloxi, 225 Miss. 291, 83 So. 2d 185, 1955 Miss. LEXIS 688 (Miss. 1955).

Purchaser of land for value from owner of record, who goes into possession of land without actual notice of any claims against land, does not have constructive notice of existing recorded trust deed upon land executed by grantee in unrecorded deed from purchaser's grantor, and purchaser is entitled to have trust deed cancelled as cloud on his title. Morgan v. Mars, 207 Miss. 848, 43 So. 2d 563, 1949 Miss. LEXIS 395 (Miss. 1949).

Abstractor is not required to search all of records in order to see whether or not some outsider, unknown to records, has conveyed property to some other person; he may safely assume title to be in party shown by records to have title. Morgan v. Mars, 207 Miss. 848, 43 So. 2d 563, 1949 Miss. LEXIS 395 (Miss. 1949).

Actual possession by the owner of land or his tenants, not actual knowledge of such possession, is all of the notice necessary to overcome priority of filing for record. Gulf Refining Co. v. Travis, 201 Miss. 336, 29 So. 2d 100, 1947 Miss. LEXIS 399 (Miss. 1947).

Deed of trust on personal property immediately taken to county of buyer's residence not constructive notice to subsequent purchaser for value unless recorded in such county. McLarty v. Ashmore, 128 Miss. 735, 91 So. 421, 1922 Miss. LEXIS 161 (Miss. 1922).

Purchase of property in the name of one person while another pays purchase price results in trust in favor of party paying, and such property cannot be sold under execution. Cannon v. Holburg Mercantile Co., 108 Miss. 102, 66 So. 400, 1914 Miss. LEXIS 177 (Miss. 1914).

Purchaser of property covered by deed of trust which refers to notes secured thereby, chargeable with notice that notes provided for attorney's fee. Turberville v. Simpson, 94 Miss. 154, 47 So. 784 (Miss. 1908).

The purchaser of land where the record shows a good title is not bound to look beyond the record to a former occupancy. Hiller v. Jones, 66 Miss. 636, 6 So. 465, 1889 Miss. LEXIS 158 (Miss. 1889).

OPINIONS OF THE ATTORNEY GENERAL

The filing of a deed in the wrong judicial district within a county that has two judicial districts is void as to all creditors and subsequent purchasers for valuable consideration without notice, but valid between the parties and their heirs. Garner, Oct. 5, 2001, A.G. Op. #01-0628.

RESEARCH REFERENCES

ALR.

Record of instrument which comprises or includes an interest or right that is not a proper subject of record. 3 A.L.R.2d 577.

Agreement between real-estate owners restricting use of property as within contemplation of recording laws. 4 A.L.R.2d 1419.

Coverage of "nonrecording" or "nonfiling" insurance against loss from failure to record chattel mortgage, conditional sale, or other security instrument. 51 A.L.R.2d 325.

Priority, as between holder of unfiled or unrecorded chattel mortgage who secures possession of goods or chattels, and subsequent purchaser or encumbrancer. 53 A.L.R.2d 936.

Discharge of mortgage and taking back of new mortgage as affecting lien intervening between old and new mortgages. 43 A.L.R.5th 519.

Priority between mechanics' liens and advances made under previous executed mortgage. 80 A.L.R.2d 179.

Am. Jur.

55 Am. Jur. 2d, Mortgages §§ 138-141.

21 Am. Jur. Pl & Pr Forms (Rev), Records and Recording Laws, Forms 1 et seq.

CJS.

59 C.J.S., Mortgages §§ 257 et seq.

76 C.J.S., Records, §§ 37-40.

Law Reviews.

The effect of bankruptcy and encumbrances on mineral interests in Mississippi. 53 Miss. L. J. 551, December, 1983.

§ 89-5-5. Priority of all instruments, and notice thereof controlled by date of filing for record; take effect, when.

Every conveyance, covenant, agreement, bond, mortgage, and deed of trust shall take effect, as to all creditors and subsequent purchasers for a valuable consideration without notice, only from the time when delivered to the clerk to be recorded; and no conveyance, covenant, agreement, bond, mortgage, or deed of trust which is unrecorded or has not been filed for record, shall take precedence over any similar instrument affecting the same property which may be of record, to the end that with reference to all instruments which may be filed for record under this section, the priority thereof shall be governed by the priority in time of the filing of the several instruments, in the absence of actual notice.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (5); 1857, ch. 36, art. 23; 1880, § 1213; 1892, § 2458; 1906, § 2788; Hemingway's 1917, § 2292; 1930, § 2148; 1942, § 869; Laws, 1924, ch. 239.

Cross References — Protection of paramount rights in partition proceedings, see § 11-21-41.

Protection of mortgagees by fire insurance policy in order of priority, see § 83-13-7.

Recording of powers of appointment, see § 91-15-15.

Crime of selling encumbered property without notice of encumbrance to vendee, see § 97-19-51.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Clerical errors; incomplete or incorrect instruments.
3. Priority of recording.
4. Vesting of title.
5. What constitutes actual knowledge.
6. Mechanic's and materialman's liens.
7. Miscellaneous.

1. In general.

Recordation under this statute gives constructive notice binding upon those subsequently dealing with the land. Smith County Oil Co. v. Jefcoat, 203 Miss. 404, 33 So. 2d 629, 1948 Miss. LEXIS 286 (Miss. 1948).

A nominal consideration, although a good consideration, is not a valuable consideration within the meaning of this statute so as to give a recorded deed for a nominal consideration precedent over an unrecorded prior deed for a valuable consideration. Smith County Oil Co. v. Jefcoat, 203 Miss. 404, 33 So. 2d 629, 1948 Miss. LEXIS 286 (Miss. 1948).

This statute is not displaced by the law of merger. Smith County Oil Co. v. Jefcoat, 203 Miss. 404, 33 So. 2d 629, 1948 Miss. LEXIS 286 (Miss. 1948).

Notice begins moment deed is lodged with proper officer for record, and failure of clerk to mark filed is immaterial. Sowell v. Rankin, 120 Miss. 458, 82 So. 317, 1919 Miss. LEXIS 108 (Miss. 1919).

This section [Code 1942, § 869] applies only to legal and not equitable title. Dedeaux v. Cuevas, 107 Miss. 7, 64 So. 844, 1914 Miss. LEXIS 38 (Miss. 1914).

2. Clerical errors; incomplete or incorrect instruments.

Unsigned recorded deed not notice. Rainey v. Lamb Hardwood Lumber Co., 91 Miss. 690, 45 So. 367, 1907 Miss. LEXIS 178 (Miss. 1907).

Record of deed not notice where acknowledgement omitted word "delivered." Ligon v. Barton, 88 Miss. 135, 40 So. 555, 1906 Miss. LEXIS 122 (Miss. 1906).

The grantee has done all the law requires of him when he has filed his deed for record, and it will prevail, although the clerk make a mistake in recording it. Mangold v. Barlow, 61 Miss. 593, 1884 Miss. LEXIS 136 (Miss. 1884); Woods v. Garnett, 72 Miss. 78, 16 So. 390, 1894 Miss. LEXIS 89 (Miss. 1894).

3. Priority of recording.

Bank's trust deed had priority over a subsequent note assignee's trust deed because the bank's deed was a renewal deed relating back to the bank's original deed. White v. Whitehead, 300 So. 3d 1078, 2020 Miss. App. LEXIS 430 (Miss. Ct. App. 2020).

Bank's mortgage lien against residential property did not have priority over a prior recorded deed of trust against the same property securing a line of credit, since the bank's payment of the outstanding balance on the line of credit did not cancel the line of credit or the deed of trust, and the deed of trust remained in effect when the term of the line of credit was renewed by agreement. U.S. Bank N.A. v. State Bank & Trust Co., 45 F. Supp. 3d 582, 2014 U.S. Dist. LEXIS 95934 (S.D. Miss. 2014).

Natural justice inexorably weighed against subrogation in favor of appellee because appellant was materially prejudiced by being placed secondary to a lien of a value and between two parties that it never agreed to be behind; when appellant recorded its deed of trust on the property appellee and all other interested parties were put on constructive notice of the existence of that deed of trust, and the failure to discover the deed of trust clearly constituted negligence. Cmty. Trust Bank of Miss. v. First Nat'l Bank of Clarksdale, 150 So. 3d 683, 2014 Miss. LEXIS 445 (Miss. 2014).

The fact that the first party waited until well after the second party recorded his deed to the property in question to place on record his own claim barred him, under § 89-5-5, from claiming priority of title over property deed. Kelly v. Shoemake, 460 So. 2d 811, 1984 Miss. LEXIS 2019 (Miss. 1984).

The filing of a notice of lis pendens in an action before the recordation of a prior deed is effective to make a judgment recovered against the grantor after such recordation a lien on the property conveyed. Jones v. Jones, 249 Miss. 322, 161 So. 2d 640, 1964 Miss. LEXIS 393 (Miss. 1964).

The deed first filed is presumed, in absence of contrary evidence, to be that first executed. Biglane v. Rawls, 247 Miss. 226, 153 So. 2d 665, 1963 Miss. LEXIS 295 (Miss. 1963).

Execution sale good against prior unrecorded deed. Levis-Zukoski Mercantile Co. v. McIntyre, 93 Miss. 806, 47 So. 435, 1908 Miss. LEXIS 140 (Miss. 1908).

Purchasers of land without notice of unrecorded bond for title to way over the land, whose deed is first recorded, acquire an absolute unencumbered title. Wills v. Reid, 86 Miss. 446, 38 So. 793, 1905 Miss. LEXIS 91 (Miss. 1905).

4. Vesting of title.

Title to property vests upon delivery of deed and not when signed and acknowledged. Cannon v. Holburg Mercantile Co., 108 Miss. 102, 66 So. 400, 1914 Miss. LEXIS 177 (Miss. 1914).

5. What constitutes actual knowledge.

Defectively acknowledged deed of trust was ineligible for recordation under § 89-5-1, however, fact that it was recorded constituted actual notice to subsequent purchasers of the interest claimed under defective deed of trust such that federal tax lien which attached subsequent to erroneous recordation of defective deed of trust was subordinate thereto. Metropolitan Nat'l Bank v. United States, 716 F. Supp. 946, 1989 U.S. Dist. LEXIS 7664 (S.D. Miss. 1989).

Actual possession by the owner of land or his tenants, not actual knowledge of such possession, constitutes actual notice under the registration statutes. Gulf Refining Co. v. Travis, 201 Miss. 336, 29 So. 2d 100, 1947 Miss. LEXIS 399 (Miss. 1947).

Under Code 1942, § 868, taken in connection with this section [Code 1942, § 869], where a trust deed is made to one who fails to record it until after another has received and recorded a trust deed on the same land, the latter having knowledge of the first deed, the purchaser under the last, though having no actual knowledge of the facts, is not protected as against the prior deed, if at the time of his purchase it had been recorded. Woods v. Garnett, 72 Miss. 78, 16 So. 390, 1894 Miss. LEXIS 89 (Miss. 1894).

6. Mechanic's and materialman's liens.

When it is shown that the petitioner has a laborer's lien or materialman's lien upon property constructed or repaired, those who claim to have superior liens as purchasers or encumbrances for a valuable consideration without notice must specifically and affirmatively plead their lien; for the burden of proof is upon one who claims to be an encumbrancer for value without notice, and he must show facts which will bring such claim within the exceptions set out in Code 1942, § 356. Enterprise Plumbing Co. v. Bailey Mortg. Co., 209 So. 2d 825, 1968 Miss. LEXIS 1474 (Miss. 1968).

Mechanic's and materialman's liens for labor performed and materials furnished in connection with installation of fixed machinery and equipment to prepare manufacturing plant for operation has priority over lien of deed of trust executed after mechanic acquired his lien in compliance with prior agreement to secure note by deed of trust on after acquired property in nature of machinery and equipment to be acquired and used in manufacturing business. Buckwalter v. McElroy, 205 Miss. 54, 38 So. 2d 317, 1949 Miss. LEXIS 411 (Miss. 1949).

7. Miscellaneous.

Chancery court properly granted a lender's successor summary judgment in its action seeking a declaratory judgment that it held a first-priority deed of trust on real property because there was no genuine issue of material fact that the successor had actual knowledge of the defective deed of trust or a beneficiary's lien; the managing member of the settlement agent for the lender swore that the lender had no knowledge of any other deed of trust. Borries v. Goshen Mortgage, 219 So. 3d 593, 2017 Miss. App. LEXIS 276 (Miss. Ct. App. 2017).

To the extent one of a bank's deeds of trust was secondary to a lienholder's deed of trust by virtue of the filing date, equitable subrogation applied because the bank's loan was secured by a corresponding deed of trust for the same property, which was allowed to be pledged by the same person for the debt of a family member's company and the bank never cancelled its other deeds of trust. Pennington Group, LLC v. PriorityOne Bank, 228 So. 3d 880, 2017 Miss. App. LEXIS 59 (Miss. Ct. App.), cert. denied, 229 So. 3d 119, 2017 Miss. LEXIS 370 (Miss. 2017).

Chancery court properly found that the foreclosure a lienholder conducted was subject to the first priority lien position of a bank because the bank had a priority lien by virtue of its prior deeds of trust; it would be inequitable to hold that the bank lost its priority lien position to the lienholder, the wife and mother of the debtors to whom the bank showed favor by stopping its foreclosure proceedings and issuing another loan, a loan whose purpose was to refinance a business debt. Pennington Group, LLC v. PriorityOne Bank, 228 So. 3d 880, 2017 Miss. App. LEXIS 59 (Miss. Ct. App.), cert. denied, 229 So. 3d 119, 2017 Miss. LEXIS 370 (Miss. 2017).

Under Mississippi Recording Act, earlier recorded deed of trust (DOT) would have priority over subsequently recorded DOT unless a subordination provision in the first DOT altered this result or unless equitable subrogation applied, but this could not be determined on motion for summary judgment, as there were disputed issues of material fact. Good Hope Constr., Inc. v. RJB Financing, LLC (In re Grand Soleil-Natchez, LLC), 2013 Bankr. LEXIS 5645 (Bankr. S.D. Miss. Aug. 13, 2013).

Where the trustee in bankruptcy abandoned property owned by the debtor which had brought less than the amount of either of the liens of a chattel mortgagee or judgment creditor when sold, the proceedings in bankruptcy did not affect the rights of the lienholders, and the holder of the judgment lien retained priority to the funds. Brookhaven Bank & Trust Co. v. Gwin, 253 F.2d 17, 1958 U.S. App. LEXIS 4895 (5th Cir. Miss. 1958).

A recorded deed of trust, containing an erroneous description of the land conveyed by the grantor, which recited that the land in question contained 60 acres more or less, whereas the grantor only owned 40 acres, was not sufficient to put the grantor's judgment creditors on notice that an entirely different tract of land was intended to be included, and did not give notice of a description which a diligent search of the records might have disclosed as to other lands belonging to the grantor, so that while the grantee was entitled to a reformation of a trust deed as against the grantor, he was not so entitled as against the judgment creditors, who had executed on the land actually owned by the grantor. Mississippi Industries for Blind v. Jackson, 231 Miss. 135, 95 So. 2d 109, 1957 Miss. LEXIS 496 (Miss. 1957).

Mortgagee was entitled to priority against a second mortgagee for advancements subsequent to second mortgagee for advancements subsequent to second mortgage only if he did not have actual notice of second mortgage where trust deed provided that all further advances to mortgagee were to be secured as principal of obligation. North v. J. W. McClintock, Inc., 208 Miss. 289, 44 So. 2d 412, 1950 Miss. LEXIS 248 (Miss. 1950).

After notice of attaching a junior lien, the senior mortgagee ordinarily will not be protected in making further advances under his mortgage given to secure such advances, where he was under no binding engagement to make such advances. North v. J. W. McClintock, Inc., 208 Miss. 289, 44 So. 2d 412, 1950 Miss. LEXIS 248 (Miss. 1950).

Where at the time subsequent purchaser acquired title to land he had actual as well as constructive knowledge that the minerals had been reserved in the deed by the original grantor to his vendor, he could not invoke the aid of this section [Code 1942, § 869] on the theory of after acquired title by reason of a quitclaim deed to his vendor from the original grantor for a nominal consideration as against a prior unrecorded conveyance of minerals by the original grantor to a third person for valuable consideration. Smith County Oil Co. v. Jefcoat, 203 Miss. 404, 33 So. 2d 629, 1948 Miss. LEXIS 286 (Miss. 1948).

A subsequent purchaser for valuable consideration after quitclaim deed to his vendor as to whom the original grantor had reserved the mineral rights, without notice of a prior unrecorded conveyance of the minerals from the original grantor to a third person for valuable consideration, acquired fees simple title to the property, notwithstanding that his vendor, having paid only a nominal consideration for the quitclaim deed, could not have invoked the benefits of this statute. Smith County Oil Co. v. Jefcoat, 203 Miss. 404, 33 So. 2d 629, 1948 Miss. LEXIS 286 (Miss. 1948).

This section [Code 1942, § 869] and Code 1942, §§ 867 and 868 are inapplicable where a grantee accepts a conveyance of certain mineral interests, which conveyance is expressly made subject to any valid and subsisting leases and further obligates the grantor to permit the grantee to receive half of the benefits accruing or to accrue under such leases. Gulf Refining Co. v. Harrison, 201 Miss. 294, 30 So. 2d 44, 1947 Miss. LEXIS 397 (Miss. 1947).

Failure to record security for debt because of inattention or agreement without purpose to give grantor fictitious credit, is not fraudulent as to grantor's creditors. Robertson & Co. v. Columbus Ins. & Banking Co., 85 Miss. 234, 38 So. 100 (Miss. 1904).

A municipal tax deed, not filed as per §§ 3028 and 3823 of the Code of 1982 (§§ 3433 and 4338 Code 1906), must be excluded under this section [Code 1942, § 869]. Sintes v. Barber, 78 Miss. 585, 29 So. 403, 1900 Miss. LEXIS 156 (Miss. 1900).

Section 89-5-19, which reverses the usual "race/notice" priority rule set out in § 89-5-5 in the situation when a creditor takes a position secured by a lien on real property at a time when an earlier creditor's lien on the same property appears on the face of the public record to be time-barred, establishes an exception to the "race/notice" scheme, not a statute of limitations. Barhorst v. Armstrong, 42 F. 2, 1890 U.S. App. LEXIS 2098 (C.C.D. Ohio 1890).

RESEARCH REFERENCES

ALR.

Attachment, garnishment, execution, or similar process in action on note or bond, not resulting in sale of mortgaged property, as precluding foreclosure of real-estate mortgage. 37 A.L.R.2d 959.

Am. Jur.

66 Am. Jur. 2d, Records and Recording Laws §§ 133 et seq.

13 Am. Jur. Proof of Facts, Delivery of Deeds, § 21 (recordation of deed as evidence of delivery).

CJS.

76 C.J.S., Records § 20.

Law Reviews.

The effect of bankruptcy and encumbrances on mineral interests in Mississippi. 53 Miss. L. J. 551, December, 1983.

§ 89-5-7. Written contracts in relation to land recordable.

Every title-bond or other written contract in relation to land may be acknowledged or proved, and certified and recorded, in the same manner as conveyances of land; and such acknowledgment or proof, and the proper certificate thereof and delivery to the clerk of the chancery court of the proper county to be recorded, shall be notice to all subsequent purchasers of the existence of such bond or contract.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (6); 1857, ch. 36, art. 24; 1871, § 2307; 1880, § 1214; 1892, § 2459; 1906, § 2789; Hemingway's 1917, § 2293; 1930, § 2141; 1942, § 862.

Cross References — When a lost record shall cease to provide constructive notice, see § 25-55-31.

Necessity of acknowledgment or proof for recording of instrument, see § 89-3-1.

JUDICIAL DECISIONS

1. In general.

Natural justice inexorably weighed against subrogation in favor of appellee because appellant was materially prejudiced by being placed secondary to a lien of a value and between two parties that it never agreed to be behind; when appellant recorded its deed of trust on the property appellee and all other interested parties were put on constructive notice of the existence of that deed of trust, and the failure to discover the deed of trust clearly constituted negligence. Cmty. Trust Bank of Miss. v. First Nat'l Bank of Clarksdale, 150 So. 3d 683, 2014 Miss. LEXIS 445 (Miss. 2014).

Court construed Miss. Code § 89-5-7 to mean that contract relating to land is not automatically binding on subsequent purchasers, but one can bind subsequent purchasers by recording contract, without which, contract will not be binding. Buras v. Shell Oil Co., 666 F. Supp. 919, 1987 U.S. Dist. LEXIS 7636 (S.D. Miss. 1987).

U.S. revenue laws making invalid unstamped written instrument do not render unstamped deed unrecordable. Sowell v. Rankin, 120 Miss. 458, 82 So. 317, 1919 Miss. LEXIS 108 (Miss. 1919).

A recital in a deed of trust to secure a part of the purchase money of land that the vendor's lien for the remaining portion of the purchase money is to remain unimpaired, is not a contract within the meaning of the section [Code 1942, § 862]. Mairs v. Bank of Oxford, 58 Miss. 919, 1877 Miss. LEXIS 94 (Miss. 1877).

A power of attorney to sell and convey land is a contract within this section [Code 1942, § 862]. Hughes v. Wilkinson's Lessee, 37 Miss. 482, 1859 Miss. LEXIS 42 (Miss. 1859).

RESEARCH REFERENCES

ALR.

Agreement between real-estate owners restricting use of property as within contemplation of recording laws. 4 A.L.R.2d 1419.

Am. Jur.

66 Am. Jur. 2d, Records and Recording Laws § 47.

§ 89-5-8. Affidavits relating to identification, marital status, heirship, etc. of party to instrument affecting real estate titles recordable; affidavit of scrivener's error recordable; admissibility.

[Effective from and after July 1, 2021, this section will read:]

(1) Any affidavit containing a statement relating to the identification, the marital status, the heirship, the relation, the death or the time of death of any person who is a party to a document affecting the title to real property, or any affidavit relating to the identification of any corporation or other legal entity which is a party to a document affecting the title to real property, signed by the affiant and verified upon oath or affirmation before a notarial officer, shall be recordable in the land records in the office of the chancery clerk in the county where the real property is situated.

(2)(a) Notice of a typographical or other minor error in a document affecting the title to real property may be given by recording an affidavit containing a statement of scrivener's error. If an affidavit is conspicuously identified as an affidavit of scrivener's error, the chancery clerk shall index the affidavit in the general index under the names of the original parties to the document if they are identified in the affidavit, and in the sectional index as provided in the indexing instructions of the affidavit. Notice of the corrective information provided by the affiant is effective upon recordation. An affidavit under this paragraph (a) may be prepared only by an attorney licensed to practice law in this state who prepared any document in the chain of title to the subject real property.

(b) The affidavit of scrivener's error shall be signed by the affiant and verified upon oath or affirmation before a notarial officer, and shall be recordable in the land records in the office of the chancery clerk in the county where the real property is situated.

(c) If requested, the chancery clerk shall make a marginal notation on the document to which the affidavit refers.

(3) Where title to homestead property is in the titled spouse, the nontitled spouse, in lieu of joining the titled spouse in executing a conveyance, mortgage, deed of trust or other encumbrance upon a homestead, may file an affidavit of nonhomestead verified upon oath or affirmation that either: (a) the nontitled spouse, together with the titled spouse, freely and voluntarily abandoned the old homestead and secured and currently together occupy a new homestead residence; or (b) the nontitled spouse freely and voluntarily separated from the titled spouse with no intent to return to the titled spouse or to reside with the

titled spouse, either temporarily or permanently, on the titled spouse's homestead, and the nontitled spouse currently maintains and occupies a separate residence.

(4) A person who knowingly makes or causes to be made a false statement in an affidavit is guilty of perjury and liable for the actual damages suffered or incurred by any person as a result or consequence of the making of or reliance upon the false affidavit. The court may award punitive damages, costs and attorney's fees.

(5) From and after July 1, 2021, an affidavit recorded under this section must include a description of the real property covered by the affidavit.

(6) Any affidavit so recorded, or a certified copy thereof, shall be admissible as evidence in any action involving the document to which it relates or the title to the real property affected by the document and shall be prima facie evidence of the facts stated therein and the marketability of the title to real property.

HISTORY: Laws, 2007, ch. 444, § 1; Laws, 2013, ch. 461, § 1, eff from and after passage (approved Mar. 25, 2013); Laws, 2020, ch. 382, § 33, eff from and after July 1, 2021.

Amendment Notes — The 2020 amendment, effective July 1, 2021, substituted "real property" for "real estate" and "document" for "instrument" throughout (1), (2) and (6); in (1), inserted "containing a statement," and substituted "signed by the affiant and verified upon oath or affirmation before a notarial officer" for "duly sworn to and acknowledged before any officer or person authorized to administer an oath under the laws of this state"; in (2)(a), inserted "containing a statement"; rewrote (2)(b), which read: "The affidavit of scrivener's error shall be sworn to and acknowledged before any officer or person authorized to administer an oath under the laws of this state, and shall be recordable in the land records in the office of the chancery clerk in the county where the real estate is situated"; and added (3) through (5), and redesignated former (3) as (6).

§ 89-5-9. Copies of certain records may be recorded.

A copy of the record of any instrument of writing affecting property in this state, and which has been legally recorded in any other state of the United States, or in a foreign country, when certified by the clerk or other officer in whose custody the record is, under his seal of office, if he have one, may be recorded in this state in the same way and with like effect as if it had been executed and acknowledged in this state.

HISTORY: Codes, 1880, § 1222; 1892, § 2469; 1906, § 2803; Hemingway's 1917, § 2304; 1930, § 2144; 1942, § 865.

Cross References — Forgery of records, see § 97-21-45.

§ 89-5-11. Patents issued by United States or this state recordable.

All patents issued in the name of the United States or of this state for lands, may, whether acknowledged or not, be recorded in the office of the clerk of the chancery court of the county in which the land embraced in the patent may lie.

HISTORY: Codes, 1857, ch. 61, art. 231; 1880, § 1625; 1892, § 2470; 1906, § 2804; Hemingway's 1917, § 2305; 1930, § 2145; 1942, § 866.

Cross References — Records of land office, see §§ 7-11-13 et seq.
Land office certificates as evidence, see § 13-1-131.
Conveyances of land by state by means of patents, see § 29-1-81.

§ 89-5-13. Instruments of conveyance recorded for seven and ten years; acknowledgment valid.

(1) Concerning an interest in land, whenever an instrument of conveyance (including but not limited to a deed of trust or assignment), release, termination or cancellation which contains a defective acknowledgement has been of record seven (7) years or more in the land records of the county in which the said land is located, the acknowledgment shall be good without regard to the form of the certificate of acknowledgment.

(2) Any such instrument which has been of record for ten (10) years and which bears no acknowledgement shall likewise be treated as if properly acknowledged.

HISTORY: Codes, 1942, § 867.5; Laws, 1954, ch. 224, §§ 1, 2; Laws, 1999, ch. 412, § 1, eff from and after July 1, 1999.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Fraud.

1. In general.

Chancery court erred in relying on Miss. Code Ann. § 89-5-13 to find that two deeds were effective on the dates reflected in the acknowledgments, without addressing uncontradicted testimony regarding the intent of the parties or considering when the deeds were delivered and accepted. Morrow v. Morrow, 129 So. 3d 142, 2013 Miss. LEXIS 546 (Miss. 2013).

Section 89-5-13 is a curative statute for deeds with defective acknowledgements, and therefore did not cure a deed's total lack of acknowledgement. Greenlee v. Mitchell, 607 So. 2d 97, 1992 Miss. LEXIS 483 (Miss. 1992).

Section 89-5-13, a purely curative statute for a deed which has been of record for 20 years with a defect in the acknowledgment, had no bearing or relevance to the issue of whether the signature on a deed was authorized, and did not create a presumption that it was. Goodwin v. McMurphy, 435 So. 2d 639, 1983 Miss. LEXIS 2617 (Miss. 1983).

2. Fraud.

The statute does not operate to sanction fraud, but rather is a curative statute for deeds with defective acknowledgments, and, therefore, does not apply to a forged deed. King v. King, 760 So. 2d 830, 2000 Miss. App. LEXIS 237 (Miss. Ct. App. 2000).

§ 89-5-15. Transfer of record; debt to be noted on record.

Except as provided in Section 89-5-37, Mississippi Code of 1972, when the indebtedness, or any part thereof, secured by a mortgage, deed of trust, or other lien of record shall be assigned by the person appearing by the record to be the creditor, he shall be required by the assignee to enter the fact of the assignment on the margin of the record of the lien; and in default of making such entry, any satisfaction or cancellation of the lien or instrument evidencing it entered by the original creditor shall release the same as to subsequent creditors and purchasers for value without notice, unless the assignment be by writing duly acknowledged and filed for record; and every assignment by an assignee of any such lien shall be entered in like manner and with like effect in case of failure.

HISTORY: Codes, 1892, § 2461; 1906, § 2794; Hemingway's 1917, § 2295; 1930, § 2150; 1942, § 871; Laws, 1988, ch. 428, § 3, eff from and after passage (approved April 23, 1988).

Cross References — Recording assignment of secured transaction under Uniform Commercial Code, see § 75-9-405.

Assignment of notes or other writings, see § 75-13-1.

JUDICIAL DECISIONS

1. In general.

The fact of the assignment is all that is required under this section [Code 1942, § 871] to be entered on the margin of the record of the lien, and it is not required that in case of a partnership a name or the names of the partners shall be stated. Frierson Bldg. Supply Co. v. Pritchard, 253 Miss. 541, 176 So. 2d 301, 1965 Miss. LEXIS 1011 (Miss. 1965).

Assignment by Federal Farm Mortgage Corporation of note and deed of trust in favor of land bank commissioner is effective transfer, as note and deed of trust became property of Federal Farm Mortgage Corporation under Federal Farm Mortgage Corporation Act, 12 USCS § 1020b. Triplett v. Bridgforth, 205 Miss. 328, 38 So. 2d 756, 1949 Miss. LEXIS 434 (Miss. 1949).

Tax sale of land which was void as to city, holding a lien on the land by virtue of having made a loan and having accepted assignment of a deed of trust to the land as security therefor, as authorized by law, for the reason that the chancery clerk's notation on record did not show that notice of the tax sale was sent by registered mail to the city as required by statute, did not impair or destroy the city's right subsequently to convey the land, or affect the rights of its grantees. Pace v. Wedgeworth, 198 Miss. 1, 20 So. 2d 842, 1945 Miss. LEXIS 162 (Miss. 1945).

Assignment of note and trust deed, entered on the bottom of the trust deed on the record together with a certificate or attestation signed by the clerk stating that the assignment had been filed and recorded was valid under this section [Code 1942, § 871]. Pace v. Wedgeworth, 198 Miss. 1, 20 So. 2d 842, 1945 Miss. LEXIS 162 (Miss. 1945).

Appointment of substitute trustee by assignee of debt valid, though assignment not noted on record. Scruggs v. Northern, 123 Miss. 169, 85 So. 89, 1920 Miss. LEXIS 15 (Miss. 1920).

Assignment of debt, though in form of deed of trust, may be noted on deed of trust record. West v. Union Naval Stores Co., 116 Miss. 743, 77 So. 609, 1917 Miss. LEXIS 347 (Miss. 1917).

RESEARCH REFERENCES

ALR.

Conflict of laws as to application of statute proscribing or limiting availability of action for deficiency after sale of collateral real estate. 44 A.L.R.3d 922.

§ 89-5-17. Assignments of indebtedness to be marked on record.

Except as provided in Section 89-5-37, all assignments in whole or in part of any indebtedness secured by mortgage, deed of trust, or other lien of record, shall be entered on the margin of the record of the lien or said assignment shall be acknowledged and filed for record, and if the assignor or assignee of said indebtedness fail to comply with the provisions of this section the debtor shall be fully protected in transactions with the holder of record in the absence of actual notice of the assignment.

HISTORY: Codes, 1906, § 2795; Hemingway's 1917, § 2296; 1930, § 2151; 1942, § 872; Laws, 1988, ch. 428, § 1, eff from and after passage (approved April 23, 1988).

Cross References — Assignments of notes or other instruments of indebtedness, see § 75-13-1.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 872] does not apply to negotiable instruments. Hughes v. Kaw Inv. Co., 133 Miss. 48, 97 So. 465, 1923 Miss. LEXIS 111 (Miss. 1923); Schwartz v. Smith, 134 Miss. 594, 99 So. 436, 1924 Miss. LEXIS 308 (Miss. 1924).

Appointment of substitute trustee by assignee of debt valid, though assignment not noted on record. Scruggs v. Northern, 123 Miss. 169, 85 So. 89, 1920 Miss. LEXIS 15 (Miss. 1920).

§ 89-5-19. When a lien appears by the record to be barred, it ceases.

Where the remedy to enforce any mortgage, deed of trust, or other lien on real or personal property which is recorded, appears on the face of the record to be barred by the statute of limitations (which, as to a series of notes or a note payable in installments, shall begin to run from and after the maturity date of the last note or last installment), the lien shall cease and have no effect as to creditors and subsequent purchasers for a valuable consideration without notice, unless within six (6) months after such remedy is so barred the fact that such mortgage, deed of trust, or lien has been renewed or extended be entered on the margin of the record thereof, by the creditor, debtor, or trustee, attested by the clerk, or a new mortgage, deed of trust, or lien, noting the fact of renewal or extension, be duly filed for record within such time. If the date of final maturity of such indebtedness so secured cannot be ascertained from the face of the record the same shall be deemed to be due one (1) year from the date of the instrument securing the same for the purpose of this section. And where a suit shall have been brought to keep a judgment alive within seven (7) years from the rendition of such judgment, the general lien of such judgment shall expire as to creditors and subsequent purchasers for a valuable consideration, without notice, at the end of seven (7) years from the rendition of such judgment, notwithstanding such suit to keep alive the judgment unless a notation to keep alive such judgment shall be made on the judgment roll within six (6) months after the expiration of seven (7) years from the time of the rendition of such judgment.

HISTORY: Codes, 1892, § 2462; 1906, § 2796; Hemingway's 1917, § 2297; 1930, § 2154; 1942, § 875; Laws, 1896, ch. 98; Laws, 1956, ch. 215; Laws, 1958, ch. 271, § 1; Laws, 1960, ch. 223.

Cross References — Limitation of actions upon mortgages and deeds of trust generally, see §§ 15-1-1 et seq.

Payment extinguishing mortgage, see § 89-1-49.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Persons and interests protected.
3. Renewal of mortgage.
4. Miscellaneous.

1. In general.

This section [Code 1942, § 875] has no application to judgment liens. Street v. Smith, 85 Miss. 359, 37 So. 837, 1904 Miss. LEXIS 159 (Miss. 1904).

Where the debtor in a trust deed dies before the debt is barred, this section [Code 1942, § 875] does not prevent extension for one year of time to sue, provided for by another statutory provision. Klaus v. Moore, 77 Miss. 701, 27 So. 612, 1900 Miss. LEXIS 16 (Miss. 1900).

This section [Code 1942, § 875] has no application to renewals or extensions made before it went into effect. Drane v. Newsom, 73 Miss. 422, 19 So. 200, 1895 Miss. LEXIS 144 (Miss. 1895).

2. Persons and interests protected.

Where note secured by deed of trust was extended from time to time, but fact of extensions was not noted on margin of record of deed of trust before remedy to enforce it appeared on face of record to be barred, or within six months thereafter, such extensions did not affect rights of subsequent creditors without notice of extensions. Lampton-Reid Co. v. Allen, 177 Miss. 698, 171 So. 780, 1937 Miss. LEXIS 152 (Miss. 1937).

That junior lien attached before bar of limitations attached to prior deed of trust did not affect right of junior lienor's transferees who purchased for valuable consideration the note and security and had no notice that lien had not been extinguished, and parted with something of value, and hence became "creditors" or "subsequent purchasers" within statute providing that recorded lien should have no effect as to creditors and subsequent purchasers where remedy thereof was barred by limitation. Lampton-Reid Co. v. Allen, 177 Miss. 698, 171 So. 780, 1937 Miss. LEXIS 152 (Miss. 1937).

"Creditor" or "subsequent purchaser" within statute is person who has parted with something of value on appearance of record, so that apparent bar cannot be availed of by one who became junior lienor before bar attached, and while notice imparted by recorded instrument was in full force. Richter Phillips Co. v. Phillips, 175 Miss. 242, 166 So. 393, 1936 Miss. LEXIS 26 (Miss. 1936).

Person who became judgment creditor of mortgagor before bar of limitations against enforcement of lien by mortgagee appeared of record held not "creditor" or "subsequent purchaser" within statute. Richter Phillips Co. v. Phillips, 175 Miss. 242, 166 So. 393, 1936 Miss. LEXIS 26 (Miss. 1936).

This section [Code 1942, § 875] protects only creditors and purchasers who parted with something of value on faith of the appearance of the record. Klaus v. Moore,

77 Miss. 701, 27 So. 612, 1900 Miss. LEXIS 16 (Miss. 1900).

3. Renewal of mortgage.

Where mortgaged property conveyed by mortgagor, subsequent renewal of mortgage does not relieve property of prior lien. Smith v. Childress, 119 Miss. 20, 80 So. 345, 1918 Miss. LEXIS 4 (Miss. 1918).

Renewal of first mortgage does not render lien of same subordinate to that of a second mortgage. Bank of Lexington v. Cooper, 115 Miss. 782, 76 So. 659, 1917 Miss. LEXIS 264 (Miss. 1917).

4. Miscellaneous.

Where senior mortgage and notes secured thereby were barred, neither junior mortgagee nor one claiming under him was bound to know any facts not of record, nor estopped to claim priority, nor to assert that attempted revival of senior mortgage was void. Musser v. First Nat'l Bank, 165 Miss. 873, 147 So. 783, 1933 Miss. LEXIS 311 (Miss. 1933).

Where no effort was made to renew or extend notes or mortgage securing them until after notes were barred, right and remedy as to notes and mortgage were barred, and could not be revived. Musser v. First Nat'l Bank, 165 Miss. 873, 147 So. 783, 1933 Miss. LEXIS 311 (Miss. 1933).

Statute held not available to one giving deed of trust or note. Mason v. Stroud, 155 Miss. 829, 125 So. 408, 1930 Miss. LEXIS 122 (Miss. 1930).

Writ of garnishment could not be issued on old judgment after seven years, though suit on judgment was commenced before seven years expired. Buckley v. F. L. Riley Mercantile Co., 155 Miss. 150, 124 So. 267, 1929 Miss. LEXIS 268 (Miss. 1929).

Trustee's deed to purchaser showing on its face that sale was made after it was barred by statute of limitation held valid, where marginal reference was made within 6 months showing renewal of original indebtedness. McBride v. Burgin, 142 Miss. 859, 108 So. 148, 1926 Miss. LEXIS 137 (Miss. 1926).

In a mortgagee's declaratory judgment action, seeking subordination or extinguishment of 2 Small Business Administration liens against the mortgaged property, Mississippi law (§ 89-5-19) would be applied as the federal rule for establishing the relative priority of competing federal and private liens. Barhorst v. Armstrong, 42 F. 2, 1890 U.S. App. LEXIS 2098 (C.C.D. Ohio 1890).

OPINIONS OF THE ATTORNEY GENERAL

In searching the records to determine the names and address of mortgagees pursuant to the mandatory provisions of Section 27-43-5, a clerk may rely upon the provisions of Section 89-5-19; he may consider as barred any lien which as of the date of the search appears to have been barred pursuant to the applicable statute of limitation at least six months prior to the date of the search for the debt secured thereby; and he need not give notice of the maturity of a tax sale to any mortgagee whose lien appears to be barred. McAdams, Feb. 18, 2000, A.G. Op. #2000-0055.

RESEARCH REFERENCES

ALR.

Reinstatement and restoration of mortgages released or discharged without authorization, as against subsequent purchasers, lienholders, judgment creditors, and the like, without notice. 35 A.L.R.2d 948.

Am. Jur.

51 Am. Jur. 2d, Limitation of Actions § 29.

CJS.

54 C.J.S., Limitation of Actions §§ 17, 52, 71 et seq.

§ 89-5-21. Entry of satisfaction upon record of mortgage or deed of trust.

(1) Except as otherwise provided in subsections (3), (4) and (5), any mortgagee or cestui que trust, or assignee of any mortgagee or cestui que trust, of real or personal estate, having received full payment of the money due by the mortgage or deed of trust, shall enter satisfaction upon the margin of the record of the mortgage or deed of trust, which entry shall be attested by the clerk of the chancery court and discharge and release the same, and shall bar all actions or suits brought thereon, and the title shall thereby revest in the grantor.

(2) Any such mortgagee or cestui que trust, or such assignee, by himself or his attorney, who does not, after payment of all sums owed, within one (1) month after written request, cancel on the record the mortgage or deed of trust shall forfeit the sum of Two Hundred Dollars ($200.00), which can be recovered by suit on part of the party aggrieved, and if after request, he fails or refuses to make such acknowledgment of satisfaction, the person so neglecting or refusing shall forfeit and pay to the party aggrieved any sum not exceeding the mortgage money, to be recovered by action; but such entry of satisfaction may be made by anyone authorized to do it by the written authorization of the mortgagee or beneficiary, duly acknowledged and recorded, and shall have the same effect as if done by the mortgagee or beneficiary.

(3) With respect to a mortgage or deed of trust which states on its face that it secures a line of credit, satisfaction of record shall be accomplished and extinguishment shall occur as provided in subsection (5).

(4) As used in this section, the term "line of credit" means any loan, extension of credit or financing arrangement where the lender has agreed to make additional or future advances.

(5) Any mortgagee or cestui que trust, or the assignee of a mortgagee or cestui que trust, under a mortgage or deed of trust securing a line of credit shall, upon (a) the termination or maturity of the line of credit and the payment of all sums owing in connection with the line of credit, or (b) the payment of all sums owing in connection with the line of credit and a written request by the debtor to cancel the line of credit and the mortgage or deed of trust securing the line of credit, enter satisfaction upon the margin of the record of the mortgage or deed of trust, which entry shall be attested by the clerk of the chancery court and discharge and release the same, and shall bar all actions or suits brought thereon, and the title shall thereby revest in the grantor. For the purpose of this subsection (5), the requirement of a written request by the debtor may be satisfied by a prospective creditor's delivery of a document, signed by the debtor, requesting cancellation of the line of credit and the mortgage or deed of trust securing the line of credit.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (33, 34); 1857, ch. 36, art. 14; 1871, § 2297; 1880, § 1206; 1892, § 2451; 1906, § 2781; Hemingway's 1917, § 2285; 1930, § 2155; 1942, § 876; Laws, 1948, ch. 233, § 1; Laws, 1995, ch. 497, § 2; Laws, 1999, ch. 570, § 2; Laws, 2000, ch. 580, § 2, eff from and after passage (approved May 20, 2000).

Cross References — Extinguishment of mortgage or deed of trust, see § 89-1-49. Acknowledgment of satisfaction by trustee, see § 89-1-51.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Recovery of penalty.
3. Miscellaneous.

1. In general.

Statute providing penalty for failure to cancel mortgage after payment is penal and strictly construed against party aggrieved. Brown v. Yarbrough, 130 Miss. 715, 94 So. 887, 1922 Miss. LEXIS 246 (Miss. 1922).

Section [Code 1942, § 876] applies to deeds of trust on personalty. Coon v. Robinson Mercantile Co., 110 Miss. 700, 70 So. 884, 1916 Miss. LEXIS 192 (Miss. 1916).

Action may be brought under this section [Code 1942, § 876] although mortgage in describing property gave lot number and addition but omitted block number. Pierce v. Kingston Lumber Co., 90 Miss. 216, 43 So. 81, 1907 Miss. LEXIS 40 (Miss. 1907).

The case must fall literally within the act. British & American Mortg. Co. v. Burke, 80 Miss. 643, 32 So. 51, 1902 Miss. LEXIS 291 (Miss. 1902).

The right to the penalty prescribed by this section [Code 1942, § 876] depends upon strict compliance with the statute. Requests which are not literally correct will not support an action for failure to acknowledge satisfaction of the mortgage. British & American Mortg. Co. v. Burke, 80 Miss. 643, 32 So. 51, 1902 Miss. LEXIS 291 (Miss. 1902); Lutz v. Hartman Mercantile Co., 41 So. 1039 (Miss. 1906).

2. Recovery of penalty.

Under statute mortgagor could recover actual damages for delay, and additional penalty where failure to cancel was due to mortgagee's gross negligence. Dawkins v. Federal Land Bank, 170 Miss. 701, 155 So. 166, 1934 Miss. LEXIS 142 (Miss. 1934).

Whether delay in cancellation was due to request of plaintiff held for jury. Dawkins v. Federal Land Bank, 170 Miss. 701, 155 So. 166, 1934 Miss. LEXIS 142 (Miss. 1934).

Cestui que trust not cancelled in trust deed on request believing clerk would cancel it, on presenting cancelled note, held not subject to penalty. Johns v. Ferguson, 153 Miss. 807, 121 So. 485, 1929 Miss. LEXIS 76 (Miss. 1929).

Statement held not sufficient request for cancellation to authorize recovery of penalty. Freeman v. McCormick Motorcar Co., 153 Miss. 474, 121 So. 138, 1929 Miss. LEXIS 49 (Miss. 1929).

Where crops grown on rented land were delivered to mortgagor with landlord's consent, in payment of debt, mortgagor was liable for failure to enter satisfaction on margin of record. Coon v. Robinson Mercantile Co., 110 Miss. 700, 70 So. 884, 1916 Miss. LEXIS 192 (Miss. 1916).

3. Miscellaneous.

To the extent one of a bank's deeds of trust was secondary to a lienholder's deed of trust by virtue of the filing date, equitable subrogation applied because the bank's loan was secured by a corresponding deed of trust for the same property, which was allowed to be pledged by the same person for the debt of a family member's company and the bank never cancelled its other deeds of trust. Pennington Group, LLC v. PriorityOne Bank, 228 So. 3d 880, 2017 Miss. App. LEXIS 59 (Miss. Ct. App.), cert. denied, 229 So. 3d 119, 2017 Miss. LEXIS 370 (Miss. 2017).

Chancery court properly found that the foreclosure a lienholder conducted was subject to the first priority lien position of a bank because the bank had a priority lien by virtue of its prior deeds of trust; it would be inequitable to hold that the bank lost its priority lien position to the lienholder, the wife and mother of the debtors to whom the bank showed favor by stopping its foreclosure proceedings and issuing another loan, a loan whose purpose was to refinance a business debt. Pennington Group, LLC v. PriorityOne Bank, 228

So. 3d 880, 2017 Miss. App. LEXIS 59 (Miss. Ct. App.), cert. denied, 229 So. 3d 119, 2017 Miss. LEXIS 370 (Miss. 2017).

Company acquiring through mesne conveyances realty sold by insane person's guardian after releases thereof by court orders from recorded trust deed substituted for trust deeds, released on record by trustees, as security for loan of ward's funds to guardian, held without constructive notice of such instruments and hence not liable for balance due ward from guardian, where substituted deed erroneously described property. Pan-American Life Ins. Co. v. Crymes, 169 Miss. 701, 153 So. 803, 1934 Miss. LEXIS 76 (Miss. 1934).

Where appellee objected below to introduction of trust deed releases because not made exhibits to answer on cross-bill, objection that no entry was made on margin of record held unavailable in supreme court. Hardin v. West, 163 Miss. 839, 143 So. 697, 1932 Miss. LEXIS 94 (Miss. 1932).

Title of assignees of second trust deed held dependent upon validity of fraudulent cancellation of first trust deed by trustee. Eagle Lumber & Supply Co. v. De Weese, 163 Miss. 602, 135 So. 490, 1931 Miss. LEXIS 4 (Miss. 1931).

Where trustee in trust deed satisfied trust deed on record and took second trust deed, payable to himself and assigned latter to secure his individual indebtedness, assignees were charged constructively with notice that second trust deed omitted name of real beneficiary. Eagle Lumber & Supply Co. v. De Weese, 163 Miss. 602, 135 So. 490, 1931 Miss. LEXIS 4 (Miss. 1931).

Cancellation of mortgage without attestation by clerk held not constructive notice. Felt v. Covington, 134 Miss. 466, 99 So. 1, 1924 Miss. LEXIS 272 (Miss. 1924).

Statement at beginning of tax deed that "I, Lent I. Rice, the tax collector of the county of Tallahatchie, did" sell the land, not a signature of deed. Rainey v. Lamb Hardwood Lumber Co., 91 Miss. 690, 45 So. 367, 1907 Miss. LEXIS 178 (Miss. 1907).

RESEARCH REFERENCES

ALR.

Requiring security as condition of canceling of record mortgage or lien, or of recording payment. 2 A.L.R.2d 1064.

Damages recoverable for real-estate mortgagee's refusal to discharge mortgage or give partial release therefrom. 8 A.L.R.4th 853.

Am. Jur.

55 Am. Jur. 2d, Mortgages §§ 404, 420 et seq.

13 Am. Jur. Legal Forms 2d, Mortgages § 179:579.1.

CJS.

59 C.J.S., Mortgages §§ 593 et seq.

Law Reviews.

The effect of bankruptcy and encumbrances on mineral interests in Mississippi. 53 Miss. L. J. 551, December, 1983.

§ 89-5-23. Oil, gas, and mineral leases; cancellation of record upon expiration.

(1) Whenever any oil, gas and mineral lease which is now or may hereafter be recorded in any county of this state shall expire or terminate, the holder of such oil, gas and mineral lease, or the last assignee of record thereof, as the case may be, shall be required to cancel of record such oil, gas and mineral lease by entering upon the margin of the record of such lease, a notation that said oil, gas and mineral lease has terminated and expired, which entry shall be attested by the clerk of the chancery court and shall discharge and release the lands therein described from said oil, gas and

mineral lease; or the holder or last assignee of record, as the case may be, of an oil, gas and mineral lease may execute an instrument, duly recordable under the laws of this state, stating that the said oil, gas and mineral lease has expired and terminated and that no further rights or claims will be asserted thereunder.

The chancery clerk shall be allowed a fee of One Dollar ($1.00) for making such cancellation, and shall not be required to index same on sectional index but shall be required to note the cancellation on the margin of the record where said lease is recorded and if said cancellation is by separate instrument he shall note the cancellation on the margin where lease is recorded showing book and page of said instrument of cancellation.

(2) If the holder of an oil, gas and mineral lease or the last assignee of record, as the case may be, shall not, within one (1) month after written request made by the lessor or his assigns, cancel on the record said oil, gas and mineral lease, or furnish proof, as above provided, that the same has expired and terminated, the lessee or the last assignee of record, as the case may be, of such oil, gas and mineral lease, shall forfeit the sum of One Hundred Dollars ($100), which may be recovered by suit on the part of the party aggrieved.

HISTORY: Codes, 1942, § 876-01; Laws, 1944, ch. 195, §§ 1, 2.

§ 89-5-24. Form of certain documents or instruments presented for recording; contents; exempt documents or instruments; additional recording fee for nonconforming documents or instruments.

(1) Except as otherwise provided in subsections (3) and (4), any document or instrument presented to the clerk of the chancery court for recording shall meet the following requirements:

(a) Each document or instrument shall consist of one or more individual pages printed only on one (1) side. The document or instrument shall not consist of pages that are permanently bound or in a continuous form and shall not have any attachment stapled or otherwise affixed to any page except as necessary to comply with statutory requirements. However, the individual pages of a document or instrument may be stapled together for presentation for recording. A label that is firmly attached with a bar code or return address may be accepted for recording.

(b) All documents must be printed or typed in a font no smaller than ten-point in size. If a document or instrument, other than a plat or survey or a drawing related to a plat or survey, presented for recording contains type smaller than ten-point type, the document or instrument shall be accompanied by an exact typewritten or printed copy that meets the requirements of this section.

(c) Each document shall be of sufficient legibility to produce a clear reproduction. If a document or instrument, other than a plat or survey or a drawing related to a plat or survey, is not sufficiently legible to produce a clear reproduction, the document or instrument shall be accompanied by an exact typewritten or printed copy that meets the type size requirements of paragraph (b) and shall be recorded contemporaneously as additional pages of the document or instrument.

(d) Each document or instrument, other than a plat or survey or a drawing related to a plat or survey, shall be on white paper of not less than twenty-pound weight. All text within the document or instrument shall be of sufficient color and clarity to ensure that the text is readable when reproduced from the record.

(e) All signatures on a document or instrument shall be in black or blue ink and of sufficient color and clarity to ensure that the signatures are of sufficient legibility to produce a clear reproduction when the document or instrument is reproduced from the record. The corresponding name shall be typed, printed or stamped beneath the original signature. The typing or printing of a name or the application of an embossed or inked stamp shall not cover or otherwise materially interfere with any part of the document or instrument except where provided by law. Failure to print or type signatures as required in this paragraph does not invalidate the document or instrument.

(f) The first page of each document or instrument, other than a plat or survey or a drawing related to a plat or survey, shall have a top margin of at least three (3) inches of vertical space from left to right which shall be reserved for the recorder's use. All other margins on the document or instrument shall be a minimum of three-fourths (¾) of one (1) inch. Nonessential information including, but not limited to, form numbers or customer notations may be placed in a margin other than the top margin. A document may be recorded if a minor portion of a seal or incidental writing extends into a margin. The recorder shall not incur any liability for failure to show a seal or information that extends beyond the margin of the permanent archival record.

(2) Each document or instrument, other than a plat or survey or a drawing related to a plat or survey, that is presented for recording and that contains any of the following information shall have that information on the first page below the three-inch margin:

(a) The name, physical business mailing address and business or employment telephone number of the individual who prepared the document; and the name, mailing address and telephone number of every grantor, grantee, borrower, beneficiary, trustee or other party to the instrument.

(b) A return address.

(c) The title of the document or instrument.

(d) Any address and telephone number required by Section 27-3-51, Mississippi Code of 1972.

(e) The legal description of the property or indexing instruction per Section 89-5-33(3). If there is insufficient space on the first page for the entire legal description or the entire indexing instruction, immediately succeeding pages shall be used.

(3) The following documents or instruments are exempt from the format requirements of this section:

(a) A document or instrument that was executed before July 1, 2009.

(b) A military separation document or instrument.

(c) A document or instrument executed outside the United States.

(d) A certified copy of a document or instrument issued by a court or governmental agency, including a vital record.

(e) A document or instrument where one (1) of the original parties is deceased or otherwise incapacitated.

(f) A document or instrument formatted to meet court requirements.

(g) A federal tax lien.

(h) A filing under the Uniform Commercial Code.

(4) The recorder shall record a document or instrument that does not substantially conform to the format standards specified in subsections (1) and (2) of this section upon payment of an additional recording fee of Ten Dollars ($10.00) per document or instrument. The fee shall be charged only for documents or instruments dated on or after July 1, 2009; this fee may not be charged for those documents or instruments specifically exempted in subsection (3).

(5) Failure to conform to the format standards specified in this section does not affect the validity or enforceability of the document or instrument.

HISTORY: Laws, 2008, ch. 508, § 1; Laws, 2011, ch. 416, § 1; Laws, 2014, ch. 309, § 1, eff from and after July 1, 2014.

§ 89-5-25. How instrument recorded and indexed; records public; copies.

(1) It shall be the duty of the clerk of the chancery court to whom any written instrument is delivered to be recorded, and which is properly recordable in his county, to record the same without delay, together with the acknowledgments of proofs and the certificates thereof, and also the plats of surveys, schedules, and other papers thereto annexed, by entering them word for word in a fair handwriting, or typewriting, or by filling up printed forms, or by recording by photostat machine or other equally permanent photographic or electronic process, and entering the hour and minute, the day of the month, and the year when the instrument was delivered to him for record, and when recorded. Records filed or stored electronically may be in addition to, or in lieu of, the physical record on paper. He shall also carefully preserve all instruments of writing, which are properly acknowledged and delivered to him to be recorded, and after recording deliver them to the party entitled thereto on demand. He shall also put a complete alphabetical index, both direct and reverse, to each book, except as provided in subsection (2), herein; and every person shall have access, at proper times, to such books, and be entitled to transcripts from the same on paying the lawful fees. He shall record the deeds and other instruments in the order of time in which they are filed for record as far as practicable.

(2) In counties having a population in excess of one hundred nineteen thousand (119,000) with an assessed valuation of all taxable property therein in excess of Sixty-three Million Dollars ($63,000,000.00), and having two (2) cities wholly located therein, each with a population in excess of thirty thousand (30,000) persons according to the preceding Federal Census, wherein the clerk of the chancery court has a well kept general index, both direct and reverse, for each kind or class of record books as required by Section 89-5-33, the board of supervisors may, by order spread upon its minutes, authorize the clerk of the chancery court to omit putting such index in each separate book of the records to which such general index is kept.

(3) This section shall not be construed to authorize and empower the boards of supervisors to purchase any photostat machines or other equally permanent photographic or electronic processes.

(4) From and after July 1, 2009, instruments to be recorded shall comply with the provisions of Section 89-5-24.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (8); 1857, ch. 36, art. 35; 1871, § 2318; 1880, § 1225; 1892, § 2474; 1906, § 2808; Hemingway's 1917, § 2309; 1930, § 2157; 1942, § 878; Laws, 1944, ch. 196, §§ 1, 2; Laws, 1962, ch. 239; Laws, 1994, ch. 521, § 40; Laws, 2008, ch. 508, § 2, eff from and after July 1, 2009.

Cross References — Duties of chancery clerk generally, see §§ 9-5-135, 9-5-137.

Lost records, see §§ 25-55-1 et seq.

Recording of releases of powers of appointment, see § 91-15-17.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Priority.

1. In general.

Looseleaf book held "well-bound book" within statute. Richardson v. Woolard, 133 Miss. 417, 97 So. 808, 1923 Miss. LEXIS 156 (Miss. 1923).

2. Priority.

Cross-defendant refinancing bank was not entitled to equitable subrogation to step into the original lender's shoes for priority over four cross-defendant judgment creditors because the property was in the debtor/borrower's infant daughter's name until the day of closing and if the bank had inquired of liens under the debtor's name, the judgment creditors' liens would have been found, thus, because the judgment creditors' liens were filed before the refinancing mortgage was filed, and they attached upon the property being reconveyed from the minor back to the debtor, under Miss. Code Ann. §§ 89-5-3, 89-5-25, the bank was last in priority. Shavers v. JPMorgan Chase Bank, N.A. (In re Shavers), 418 B.R. 589, 2009 Bankr. LEXIS 3411 (Bankr. S.D. Miss. 2009).

RESEARCH REFERENCES

ALR.

Negligence in preparing abstract of title as ground of liability to one other than person ordering abstract. 50 A.L.R.4th 314.

§ 89-5-27. Receipt for instruments delivered to chancery clerk for recording.

The clerk of the chancery court, or his deputy, shall give a receipt for every written instrument delivered to him to be recorded, if demanded, in which he shall state the name of the parties, the date of delivery and quantity of land or other property therein specified, and shall also certify on or under such instrument the hour and minute, the day and month, and the year when he received it; and when the same is recorded, he shall make an appropriate reference where it is recorded, and an itemized statement of his fees therefor, and he shall deliver it to the party entitled to receive it when called for.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (10); 1857, ch. 36, art. 36; 1871, § 2319; 1880, § 1223; 1892, § 2471; 1906, § 2805; Hemingway's 1917, § 2306; 1930, § 2156; 1942, § 877; Laws, 1924, ch. 228; Laws, 1928, ch. 199; Laws, 1952, ch. 342; Laws, 1994, ch. 521, § 41, eff from and after passage (approved March 25, 1994).

§ 89-5-29. Mortgages and deeds of trust on land; how recorded.

Except as hereinafter provided, all mortgages and deeds of trust upon land given to secure the payment of money, and all instruments of writing whereby a trustee is substituted under any such deed of trust, and all instruments of writing canceling or satisfying, or authorizing the cancellation or satisfaction of any such mortgage or deed of trust, shall be recorded separately from other instruments relating to land or records, and such records shall be called "records of mortgages and deeds of trust on land."

HISTORY: Codes, 1906, § 2809; Hemingway's 1917, § 2310; 1930, § 2158; 1942, § 879; Laws, 1994, ch. 521, § 42, eff from and after passage (approved March 25, 1994).

JUDICIAL DECISIONS

1. In general.

Recordation of real estate mortgages and deed of trust of land in the chattel deed records is ineffectual. Seal v. Anderson, 235 Miss. 249, 108 So. 2d 864, 1959 Miss. LEXIS 422 (Miss. 1959).

Recording appointment of substituted trustee in deed book instead of mortgage records held a compliance with statute. Camp v. Celtic Land & Improv. Co., 129 Miss. 417, 91 So. 897, 1922 Miss. LEXIS 30 (Miss. 1922).

RESEARCH REFERENCES

ALR.

Negligence in preparing abstract of title as ground of liability to one other than person ordering abstract. 50 A.L.R.4th 314.

Am. Jur.

55 Am. Jur. 2d, Mortgages §§ 404, 420 et seq.

CJS.

59 C.J.S., Mortgages §§ 257 et seq.

§ 89-5-31. Repealed.

Repealed by Laws, 1993, ch. 546, § 2, eff from and after January 1, 1994.

§ 89-5-31. [Codes, 1906, § 2810; Hemingway's 1917, § 2311; 1930, § 2159; 1942, § 880; Laws, 1946, ch. 172, § 1]

Editor's Notes — Former § 89-5-31 provided for the indexing of mortgages and deeds of trust on land. Similar provisions may now be found in § 89-5-33.

§ 89-5-33. General index; direct and reverse.

(1) The clerk of the chancery court shall provide a general index, direct and reverse, on which shall be entered, in regular alphabetical order under the appropriate letter, the name of each maker of the instrument and the name of each person to whom made; and in like alphabetical order under its appropriate title shall be entered the name of each person to whom the instrument is made and the name of each person by whom made. A general index, both direct and reverse, of mortgages and deeds of trust on land shall be kept separate from the general index to other records which the chancery clerk is required to keep, and he shall make the proper entries in it as he is required to make in the other general index. Immediately on receipt of any instrument to be recorded, the clerk shall make these entries in the appropriate general index and, after recording the instrument, the book and page in which the record is made shall be noted opposite each name thus placed in such general index, both direct and reverse.

(2) The clerk of the chancery court shall maintain a sectional index to instruments describing land which are also entered in the general index. Each entry shall state the name of each maker of the instrument, the name of each person to whom made, and the date, type of instrument and the appropriate reference where recorded. Opposite each such entry, the sectional index shall indicate the location of the land described in the instrument (a) by quarter section or governmental lot or other applicable subdivision of each section, township and range established by governmental survey, or (b) by lot number for platted subdivisions, official surveys, and unofficial subdivisions and surveys commonly in use. The clerk may elect to keep the sectional index by quarter-quarter section rather than by the quarter section, but shall not require a preparer's indexing instruction to describe the quarter-quarter section. Except as otherwise provided in this section, every instrument describing land and required to be entered in the general index shall also be entered in the sectional index. In the event of conflict between the general and the sectional indices, the notice imparted by the general index shall prevail except to the extent the land is described by lot number for platted subdivisions, official surveys, and unofficial subdivisions and surveys commonly in use, the sectional index shall prevail.

(3) Every surveyor or other person who prepares a legal description of land or who prepares an instrument utilizing an existing description and every person who prepares a deed of trust shall (except as herein provided) include

an indexing instruction which shall state the section, township and range and one or more quarter sections or governmental lots or other applicable subdivisions of each section in which the land is located. The preparer, at his option, may elect to note the quarter-quarter section in which the land is located, but shall not be required to do so. However, if the section or quarter sections or governmental lots or other applicable subdivisions of the section cannot feasibly be determined by such surveyor or other person, the indexing instruction shall contain a statement to that effect and shall then state all of the sections and quarter sections or governmental lots or other applicable subdivisions of the section in which the described land could possibly be located. The indexing instruction shall be distinctly set apart in the instrument so as to be readily apparent to the chancery clerk. A chancery clerk shall refuse to accept delivery of an instrument which does not contain the indexing instruction required in this section unless the instrument otherwise discloses the information required to be included in an indexing instruction. To be accepted for recording, an instrument shall state the name, address and telephone number of the person, entity or firm preparing it. If prepared by an attorney, the instrument shall also include the attorney's Mississippi bar number. The fact that the indexing instruction or preparer information may be omitted, incorrect, incomplete or false shall not invalidate the instrument or the filing thereof for record. The chancery clerk shall enter the instrument in the sectional index according to the indexing instruction, or equivalent information if accepted for filing without an indexing instruction, and shall make no entries under any other quarter sections or governmental lots or subdivisions of the section. Notwithstanding the foregoing, the following kinds of instruments shall be indexed as stated:

(a) Instruments describing land by reference to officially platted subdivisions or to official surveys or to unofficial subdivisions and surveys commonly in use will not require an indexing instruction and shall be indexed in the general index and the sectional index for such subdivision or survey without further requirement.

(b) Instruments describing land or interests in land solely by reference to previously recorded instruments or affecting previously recorded instruments shall not require an indexing instruction and need not be entered in the sectional index but shall be entered in the general index and noted on the margin of the previously recorded instrument. Instruments describing land or interests in land by specific description of certain parcels and, for other parcels, by reference to previously recorded instruments, shall be entered in the sectional index according to the indexing instruction for the specific description and also noted on the margin of the previously recorded instrument, in addition to the general index.

(c) Instruments containing blanket descriptions of all land within a stated geographic area without specific description shall be entered in a separate part of the sectional index or in an index of indefinite records or an index of blanket conveyances in addition to the general index.

(d) Instruments describing land in irregular sections (all or any part of a section not capable of being divided into quarter sections for indexing purposes) shall be entered in the general index and in an appropriate sectional index maintained by the chancery clerk. The indexing instruction, however, shall be proper and complete if it states no more than the number of the irregular section or sections in which the land is located or, as above provided, in which the land could possibly be located. When an instrument describes land within an irregular section according to officially platted subdivisions or to official surveys or to unofficial subdivisions or surveys commonly in use, it shall be indexed in the sectional index for such subdivisions or surveys.

(4) When an instrument has been restored to service from microfilm or other archived record, the chancery clerk shall enter a notation on the margin stating that it is a substituted record and stating the date on which it was restored to service. Such marginal notation shall then constitute notice that the general index must be examined for instruments filed prior to such date which may have been noted on the margin of the original record but do not appear on the margin of the restored record.

(5) The clerk of the chancery court shall enter instruments in the sectional index by the end of the twentieth day the office is open following the day on which the instrument is filed, except for records of tax sales.

(6) If the chancery clerk elects to abbreviate the names of parties to an instrument in the indices, the clerk shall maintain a list of standard abbreviations used for that purpose and shall adhere to such list.

(7) The clerk of the chancery court shall not correct or alter an entry made in any index, whether kept manually or by computer, unless the date and time of the change is clearly disclosed on the revised record.

(8) If insufficient space is available for making entries on the margin of a recorded instrument, the chancery clerk may enter on the margin a reference where a continuation sheet is located.

(9) Except as expressly provided herein, nothing contained in this section shall be construed to modify the requirements of other statutes regarding the duties of the clerk of the chancery court to index and record instruments affecting the title to land.

HISTORY: Codes, 1871, § 2320; 1880, § 1224; 1892, § 2472; 1906, § 2806; Hemingway's 1917, § 2307; 1930, § 2160; 1942, § 881; Laws, 1993, ch. 546, § 1; Laws, 1994, ch. 521, § 43; Laws, 2008, ch. 356, § 1; Laws, 2009, ch. 442, § 1, eff from and after July 1, 2009.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (3). In the third sentence of (3), an apparent typographical error was corrected by substituting "determined by such survey or other person" for "determined by such survey or other person." The Joint Committee ratified the correction at its April 26, 2001, meeting.

Subsequently a publishing error was corrected by substituting the word "surveyor" for "survey" so that the phrase read "determined by such surveyor or other person."

Editor's Notes — Laws of 1993, ch. 546, § 3, effective January 1, 1994, provides as follows:

"SECTION 3. Nothing in this act shall be construed to require chancery clerks to alter records filed prior to January 1, 1994, nor shall this act be construed to affect land titles prior to January 1, 1994."

Cross References — Filing of brownfield agreements, see § 49-35-17.

Persons who for compensation write deeds of conveyance, deeds of trust, mortgages or contracts, or make or certify abstracts of title to certain real estate, held to be engaged in the practice of law, see § 73-3-55.

Recording of release of power of appointment, see § 91-15-17.

JUDICIAL DECISIONS

ANALYSIS

1. Conflict between indices.
2. Validity.

1. Conflict between indices.

Summary judgment was properly awarded to a bank in a company's suit alleging that it was a bona fide purchaser of property for value without notice of the bank's deed of trust because under Miss. Code Ann. § 89-5-33(2), the company had a duty to search the general index, as it prevailed over an incorrect entry in the sectional index. Alamac LLC v. Travelers Bank & Trust, 941 So. 2d 219, 2006 Miss. App. LEXIS 711 (Miss. Ct. App. 2006).

2. Validity.

Grant of summary judgment in favor of the neighbors in their action against other neighbors to have fences removed was appropriate under Miss. Code Ann. § 89-5-33(3) because the misnomer in the original deed transfer did not invalidate the restrictive covenants, and even if it had, the developer followed the necessary steps to correct the defect; accordingly, the other neighbors' argument that the deed transfers were invalid was without merit. Journeay v. Berry, 953 So. 2d 1145, 2007 Miss. App. LEXIS 228 (Miss. Ct. App. 2007).

OPINIONS OF THE ATTORNEY GENERAL

Statute does not require cancellations or assignments of deed of trust to bear legal description but it does require that any person who prepares an instrument "utilizing an existing description" to include an indexing instruction for sectional index. Amos, March 2, 1994, A.G. Op. #94-0070.

Chancery Clerk of county could use proposed parcel numbers system as official sectional index of county without being in violation of Section 89-5-33. O'Beirne, March 9, 1994, A.G. Op. #93-0971.

Chancery Clerk should not refuse to accept for recording instrument that does not have information required under 89-5-33(3) and no penalty should be imposed for accepting it. Thomas, March 9, 1994, A.G. Op. #94-0016.

Indexing information does not have to be part of legal description and can be stated in separate part of instrument or as exhibit. Thomas, March 9, 1994, A.G. Op. #94-0016.

If the records of the Chancery Clerk's Office are stored electronically and there is therefore no book and page, they may be assigned a properly indexed unique identifier which will make them readily accessible to the general public; such records must be cross-referenced as required by Section 89-5-33 and, also, any electronically maintained records must be accessible to the public in accordance with the Public Records Act. McAdams, Jan. 10, 2003, A.G. Op. #02-0760.

§ 89-5-35. How certain conveyances indexed.

Every conveyance by a sheriff, constable, marshal, master, commissioner, executor, administrator, guardian, trustee, or other person, in an official or representative character, shall be indexed by the clerk in proper alphabetical order as the conveyance of each person who executed it, and, in like manner, as the conveyance of each person whose property is sold and conveyed; and, for failure herein, he shall be liable in damages and for a penalty of Two Hundred Dollars ($200.00) to any person sustaining damage by such failure.

HISTORY: Codes, 1880, § 1226; 1892, § 2473; 1906, § 2807; Hemingway's 1917, § 2308; 1930, § 2161; 1942, § 882.

Cross References — Conveyances by masters, commissioners, sheriffs and constables, see § 89-1-27.

Forms of conveyances by sheriffs, constables, or persons acting in representative or official character, see §§ 89-1-65, 89-1-67.

§ 89-5-37. Name of beneficiary must be disclosed in mortgage or deed of trust to be recorded; exception.

The clerk of the chancery court, or his deputy, shall not record any mortgage or deed of trust in which the name of the beneficiary is not disclosed therein, and if such instrument is recorded it shall not impart notice to anyone. But the preceding sentence shall not apply if the mortgage or deed of trust discloses as beneficiary the name of an agent or other representative designated as such of one or more holders of the secured indebtedness in which event there shall be no requirement to disclose the holders of promissory notes, bonds, certificates of participation, trustee's certificates or the like secured by the mortgage or deed of trust. The assignment or transfer of a secured indebtedness need not be filed for record nor entered on the margin of the record if the holder thereof is represented by an agent, trustee or the like disclosed as beneficiary in the mortgage or deed of trust.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (10); 1857, ch. 36, art. 36; 1871, § 2319; 1880, § 1223; 1892, § 2471; 1906, § 2805; Hemingway's 1917, § 2306; 1930, § 2156; 1942, § 877; Laws, 1924, ch. 228; Laws, 1928, ch. 199; Laws, 1952, ch. 342; Laws, 1988, ch. 428, § 2, eff from and after passage (approved April 23, 1988).

Cross References — Application of the exceptions provided in this section to the requirement that transfers of record-debts be noted on the record, see § 89-5-15.

Application of the exceptions provided in this section to the requirement that assignments of indebtedness be marked on the record, see § 89-5-17.

JUDICIAL DECISIONS

1. In general.

Prohibition against notice by an improperly recorded deed of trust applies to constructive notice only and would not prevent actual notice. Borries v. Goshen Mortgage, 219 So. 3d 593, 2017 Miss. App. LEXIS 276 (Miss. Ct. App. 2017).

Beneficiary deed of trust was not void because it identified the note, date of the note, and payment schedule, and thus, the beneficiary could, with simple review, have been reasonably certain. Borries v. Goshen Mortgage, 219 So. 3d 593, 2017 Miss. App. LEXIS 276 (Miss. Ct. App. 2017).

Chancery court properly granted a lender's successor summary judgment in its action seeking a declaratory judgment that it held a first-priority deed of trust on real property because there was no genuine issue of material fact that the successor had actual knowledge of the defective deed of trust or a beneficiary's lien; the managing member of the settlement agent for the lender swore that the lender had no knowledge of any other deed of trust. Borries v. Goshen Mortgage, 219 So. 3d 593, 2017 Miss. App. LEXIS 276 (Miss. Ct. App. 2017).

District court did not err in finding that Mortgage Electronic Registration Systems, Inc. (MERS), validly assigned the deed of trust on the homeowners' home to the lender, which in turned assigned the home to another lender, the company that ultimately sold the homeowners' home via foreclosure sale; under governing state law, the appellate court therefore must enforce the clear terms of the deed of trust that empowered MERS to make subsequent assignments. Burton v. Nationstar Mortg., LLC, 642 Fed. Appx. 422, 2016 U.S. App. LEXIS 5890 (5th Cir. Miss. 2016).

Tenant's goods and chattels, which he conveyed by recorded trust deed to trustee as security for indebtedness to decedent's estate, held subject to payment of rent, where landlord had no actual notice of such deed, which did not sufficiently disclose beneficiary to constitute constructive notice of its contents, and tenant represented throughout that goods were free from any lien. Life Ins. Co. v. Page, 178 Miss. 287, 172 So. 873, 1937 Miss. LEXIS 206 (Miss. 1937).

Recorded trust deed, conveying chattels to trustee as security for indebtedness to estate of named decedent, did not sufficiently disclose beneficiary to constitute constructive notice of its contents. Life Ins. Co. v. Page, 178 Miss. 287, 172 So. 873, 1937 Miss. LEXIS 206 (Miss. 1937).

Evidence held not to sustain finding that named mortgagee was not beneficiary as required for record to constitute notice defeating lien of mortgagor's trustee. National Stockyards Nat'l Bank v. Isaacs, 146 Miss. 369, 112 So. 1, 1927 Miss. LEXIS 235 (Miss. 1927).

§ 89-5-39. Books of record not to be removed.

A book of record of conveyances shall not be removed by writ or subpoena duces tecum, or otherwise, before any court, out of the courthouse in which such record is kept, when a certified copy or transcript may be given in evidence.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (22); 1857, ch. 36, art. 34; 1871, § 2317; 1880, § 1228; 1892, § 2476; 1906, § 2813; Hemingway's 1917, § 2314; 1930, § 2164; 1942, § 885.

Cross References — Admissibility in evidence of certified copies of records, see §§ 13-1-77 et seq.

§ 89-5-41. Records in counties divided into two districts.

Where it is not now so provided by law, in any county divided into two (2) districts for circuit and chancery courts, the board of supervisors may, by an order entered on its minutes, to go into effect six (6) weeks thereafter, require the clerk of the chancery court to transcribe into new record books the record of all conveyances theretofore made, and record all conveyances thereafter made affecting property situated wholly or partly in the district not before having the records; and all conveyances shall thereafter be recorded only in the proper district. And the records of conveyances in such district shall be kept and have the same effect as if they were several counties.

HISTORY: Codes, 1892, § 2477; 1906, § 2814; Hemingway's 1917, § 2315; 1930, § 2165; 1942, § 886.

§ 89-5-43. Penalty on clerk for failure of duty.

Any clerk who shall refuse or fail to perform any of the duties herein required shall, for every such refusal or neglect, be liable on his official bond to any party injured for all damages which such party may have sustained by reason of the nonperformance of such duty.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (11); 1857, ch. 36, art. 37; 1871, § 2321; 1880, § 1229; 1892, § 2478; 1906, § 2815; Hemingway's 1917, § 2316; 1930, § 2166; 1942, § 887.

Cross References — Criminal penalty for failure to perform duty, see § 97-11-37.

§ 89-5-45. Substitution of trustee must appear of record; general substitution allowed for certain beneficiaries.

Sales of land made under deeds of trust by substituted trustees shall not convey the interest of the grantor or grantors therein, but shall be absolutely null and void, both at law and in equity, unless the substitution shall appear of record in the office of the chancery clerk of the county where the land is situated, and unless it shall so appear by being actually spread at large upon the record before the first advertisement or notice of sale shall have been posted or published; the filing for record or lodging with the clerk not being sufficient. Such substitution, however, may so appear by a separate instrument recorded as above set out in all respects, or a copy of such substitution may be recorded as above set out. Provided, however, that where the beneficiary named in the deed of trust is an agency of the United States or the State of Mississippi, a national or state chartered bank or savings and loan association, a federal land bank, a production credit association, or an insurance company, the beneficiary may substitute the trustee named therein and the trustee named in all deeds of trust held by such beneficiary in the county, by recording in the office of the chancery clerk in the county where the land encumbered is situated one (1) instrument designated as a general substitution. It shall not be necessary for the general substitution to identify individually deeds of trust affected, or the grantors therein, it being sufficient if the instrument recites the name and address of the beneficiary and declares that its purpose is to name a substitute trustee for all mortgages or deeds of trust held by the named beneficiary which are recorded in the county. All general substitutions shall be indexed by the chancery clerk in a separate book especially designated for such purpose.

HISTORY: Codes, 1906, § 2773; Hemingway's 1917, § 2277; 1930, § 2168; 1942, § 890; Laws, 1896, ch. 96; Laws, 1983, ch. 328, eff from and after July 1, 1983.

Cross References — Place of sale under execution, see § 13-3-161.
Sales under deeds of trust or mortgages generally, see § 89-1-55.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Right to appoint substituted trustee.
3. Recording of appointment of substituted trustee.
4. Effect of void sale.
5. Miscellaneous.

1. In general.

Recording means copying instrument into public records in book kept for purpose by or under superintendence of officer therefor. White v. Stennis, 151 Miss. 765, 118 So. 902, 1928 Miss. LEXIS 377 (Miss. 1928).

Sale under trust deed by substituted trustee is void unless appointment recorded in chancery clerk's office in county of land's situs. Camp v. Celtic Land & Improv. Co., 129 Miss. 417, 91 So. 897, 1922 Miss. LEXIS 30 (Miss. 1922).

Substitution must precede sale. Provine v. Thornton, 92 Miss. 395, 46 So. 950, 1908 Miss. LEXIS 253 (Miss. 1908).

Instrument substituting trustee is of record from time delivered to clerk. Brown v. British American Mortg. Co., 86 Miss. 388, 38 So. 312, 1905 Miss. LEXIS 26 (Miss. 1905).

Recording of instrument of substitution contemporaneous with sale complies with law. Brown v. British American Mortg. Co., 86 Miss. 388, 38 So. 312, 1905 Miss. LEXIS 26 (Miss. 1905).

Failure to record substitution before sale renders sale void, though duly recorded thereafter. Hyde v. Hoffman, 31 So. 415 (Miss. 1902).

A sale of land under a deed of trust made by a duly appointed substituted trustee before his appointment was filed for record, is void, though the appointment was duly filed thereafter. Hyde v. Hoffman, 31 So. 415 (Miss. 1902).

Sale by substituted trustee void unless substitution placed of record before sale. Shipp v. New South Bldg. & Loan Asso., 81 Miss. 17, 32 So. 904, 1902 Miss. LEXIS 112 (Miss. 1902); Polk v. S. S. Dale & Sons, 93 Miss. 664, 47 So. 386, 1908 Miss. LEXIS 130 (Miss. 1908).

Under this section [Code 1942, § 890], the writing appointing a substituted trustee must be of record before a valid sale under a trust deed can be made by him. White v. Jenkins, 79 Miss. 57, 28 So. 570, 1901 Miss. LEXIS 2 (Miss. 1901); Shipp v. New South Bldg. & Loan Asso., 81 Miss. 17, 32 So. 904, 1902 Miss. LEXIS 112 (Miss. 1902).

2. Right to appoint substituted trustee.

The executor of the estate of the mortgagee in a deed of trust is empowered to appoint a substitute trustee where such power was specifically given in the deed trust to the mortgagee or his assignes. White v. Hesdorffer, 202 Miss. 711, 32 So. 2d 442, 1947 Miss. LEXIS 333 (Miss. 1947).

Liquidating agent of insolvent bank held its legal representative within provision of deed of trust giving bank authority to substitute trustee. Stringer v. Price, 143 Miss. 189, 108 So. 431, 1926 Miss. LEXIS 254 (Miss. 1926).

Provision that beneficiary, executor, administrator, or assigns, under his hand and seal, could appoint substitute trustee, did not require substitution under hand and seal of original beneficiary but could be done by assignee. Scruggs v. Northern, 123 Miss. 169, 85 So. 89, 1920 Miss. LEXIS 15 (Miss. 1920).

Provision of deed of trust that beneficiary, assignee, or legal representative might appoint another trustee, where trustee refused to act, gave corporation assignee right to appoint substituted trustee. West v. Union Naval Stores Co., 117 Miss. 153, 77 So. 961, 1918 Miss. LEXIS 160 (Miss. 1918).

The attorney in fact of the beneficiary of a deed of trust cannot appoint a substituted trustee where the deed provides for the appointment "by the beneficiary or any holder of the notes secured or their legal representatives." Allen v. Alliance Trust Co., 84 Miss. 319, 36 So. 285, 1904 Miss. LEXIS 40 (Miss. 1904).

3. Recording of appointment of substituted trustee.

Substitution of the trustee under a deed of trust of land should be recorded in the records of mortgages and deeds of trust on land, rather than in the chattel mortgages and deeds of trust records. Seal v. Anderson, 235 Miss. 249, 108 So. 2d 864, 1959 Miss. LEXIS 422 (Miss. 1959).

Placement of the name of the county in the space provided for that of the substituted trustee and the name of the substituted trustee in the space provided for the county in a substitution of trustee in a deed of trust referred to by book and page, there being two pages in the book numbered the same as that specified in the substitution, violated strict compliance with this section [Code 1942, § 890] and probably so deterred the average layman from bidding at a subsequent foreclosure sale as to render the sale voidable. Federal Land Bank v. Collom, 201 Miss. 266, 28 So. 2d 126, 1946 Miss. LEXIS 357 (Miss. 1946).

Where substitution of trustee under trust mortgage was pasted or written on margin of record of mortgage before first notice of foreclosure sale was posted or published, foreclosure by substituted trustee was valid. Federal Land Bank v. McCraney, 171 Miss. 191, 157 So. 248, 1934 Miss. LEXIS 218 (Miss. 1934).

Attorney's copying substitution of trustees in deed of trust book, neither beneficiary nor clerk being present, was unauthorized and sale by substituted trustee was void. White v. Stennis, 151 Miss. 765, 118 So. 902, 1928 Miss. LEXIS 377 (Miss. 1928).

Appointment of substituted trustee by writing addressed to chancery clerk of county, specifying substitution, held sufficient to vest substituted trustee with power to maintain suit in replevin for property covered by deed of trust. Stringer v. Price, 143 Miss. 189, 108 So. 431, 1926 Miss. LEXIS 254 (Miss. 1926).

Recording appointment of substituted trustee in deed book instead of mortgage record held a compliance with statute. Camp v. Celtic Land & Improv. Co., 129 Miss. 417, 91 So. 897, 1922 Miss. LEXIS 30 (Miss. 1922).

Substitution of trustee appears of record and is spread thereon when written on margin by clerk and signed by beneficiary. King v. Jones, 121 Miss. 319, 83 So. 531, 1919 Miss. LEXIS 166 (Miss. 1919).

Substitution of trustee may be by separate writing attached to original. Watkins v. McDonald, 41 So. 376 (Miss. 1906).

4. Effect of void sale.

Where a county, which had become the purchaser of land upon foreclosure of a deed of trust held by it, and had received a deed thereto from a subsequent trustee, but had obtained no title because the substitution of the trustee was not made a matter of record as required by statute, sold the land under an order of the board of supervisors, which was void in that the order had been made at a special meeting, the call for which failed to make provision, either expressly or impliedly, for taking up the matter of the sale and conveyance of the land, a later valid foreclosure of the trust deed and the purchase by the county did not inure to the benefit of the would-be purchaser under the void sale by the board, so as to render her title good, since such would-be purchaser had been affected with notice of the illegality of the first foreclosure and the conveyance following it made to her, and persons dealing with members of the board of supervisors, who are trustees for the public and bound by the limitations fixed by law on their powers, must take notice of their powers and cannot acquire rights where they are acting beyond their authority. Simpson County v. Floyd, 192 Miss. 501, 6 So. 2d 580, 1942 Miss. LEXIS 41 (Miss. 1942).

5. Miscellaneous.

Trustee did not lack authority to conduct a foreclosure sale because the initial deed of trust named him as trustee the record was devoid of any substitution of a trustee. Hall v. Green Tree Servicing, LLC, 210 So. 3d 1002, 2015 Miss. App. LEXIS 157 (Miss. Ct. App. 2015).

Substituted trustee could resell where first sale void because substitution not recorded. Polk v. S. S. Dale & Sons, 93 Miss. 664, 47 So. 386, 1908 Miss. LEXIS 130 (Miss. 1908).

Trustee appointed by mortgagee under provision providing for such appointment in default of payment to foreclose same, is not a substituted trustee. Searles v. Kelley, Simmons & Co., 88 Miss. 228, 40 So. 484, 1906 Miss. LEXIS 111 (Miss. 1906).

Instrument by corporation substituting trustee not void because not under seal. Brown v. British American Mortg. Co., 86 Miss. 388, 38 So. 312, 1905 Miss. LEXIS 26 (Miss. 1905).

§§ 89-5-47 through 89-5-53. Repealed.

Repealed by Laws, 1989, ch. 515, § 9, eff from and after January 1, 1990.

§ 89-5-47. [Codes, 1930, § 2171; 1942, § 893; Laws, 1924, ch. 226]

§ 89-5-49. [Codes, 1930, § 2172; 1942, § 894; Laws, 1924, ch. 226]

§ 89-5-51. [Codes, 1930, § 2173; 1942, § 895; Laws, 1924, ch. 226]

§ 89-5-53. [Codes, 1930, § 2174; 1942, § 896; Laws, 1924, ch. 226; Laws, 1978, ch. 529 § 1]

Editor's Notes — Former § 89-5-47 specified the place for filing notice of a federal tax lien. For provisions governing filing of federal tax liens from and after January 1, 1990, see Uniform Federal Lien Registration Act, §§ 85-8-1 et seq.

Former § 89-5-49 required notice of a federal tax lien to be entered in a federal tax lien index. For provisions governing filing of federal tax liens from and after January 1, 1990, see Uniform Federal Lien Registration Act, §§ 85-8-1 et seq.

Former § 89-5-51 related to entering notice of discharge of a lien. For provisions governing filing of federal tax liens from and after January 1, 1990, see Uniform Federal Lien Registration Act, §§ 85-8-1 et seq.

Former § 89-5-53 provided for compensation of the chancery clerk for filing and indexing notice of lien, and each certificate of discharge. For provisions governing filing of federal tax liens from and after January 1, 1990, see Uniform Federal Lien Registration Act, §§ 85-8-1 et seq.

ARTICLE 3.

UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT.

Sec.

89-5-101. Short title.
89-5-103. Definitions.
89-5-105. Validity of electronic documents.
89-5-107. Recording of documents.
89-5-109. Administration and standards.
89-5-111. Uniformity of application and construction.
89-5-113. Relation to Electronic Signatures in Global and National Commerce Act.

§ 89-5-101. Short title.

This article may be cited as the Uniform Real Property Electronic Recording Act.

HISTORY: Laws, 2011, ch. 364, § 1, eff from and after July 1, 2011.

Comparable Laws from other States — Alabama: Code of Ala. §§ 35-4-120 et seq.
Arizona: A.R.S. §§ 11-487 et seq.
Arkansas: A.C.A. §§ 14-2-301 et seq.
Connecticut: Conn. Gen. Stat. §§ 7-35aa et seq.

Delaware: 25 Del. C. § 180 et seq.
District of Columbia: D.C. Code § 42-1231 et seq.
Florida: Fla. Stat. § 695.27
Georgia: O.C.G.A. § 44-2-35 et seq.
Hawaii: HRS § 502-121 et seq.
Idaho: Idaho Code § 31-2901 et seq.
Illinois: 765 ILCS 33/1 et seq.
Indiana: Burns Ind. Code Ann. § 32-21-2.5-1 et. seq.
Kansas: K.S.A. § 58-4401 et seq.
Maryland: Md. REAL PROPERTY Code Ann. § 3-702 et seq.
Michigan: MCLS § 565.841 et seq.
Nevada: Nev. Rev. Stat. Ann. § 111.366 et seq.
New Mexico: N.M. Stat. Ann. § 14-9A-1 et seq.
North Carolina: N.C. Gen. Stat. § 47-16.1 et seq.
Oklahoma: 16 Okl. St. § 86.1 et seq.
Pennsylvania: 21 P.S. § 483.1 et seq.
Rhode Island: R.I. Gen. Laws § 34-13.2-1 et seq.
South Carolina: S.C. Code Ann. § 30-6-10 et seq.
South Dakota: S.D. Codified Laws § 7-9A-1 et seq.
Tennessee: Tenn. Code Ann. §§ 66-24-201 et seq.
Texas: Tex. Prop. Code § 15.001 et seq.
Utah: Utah Code Ann. § 17-21a-101 et seq.
Virginia: Va. Code Ann. §§ 55.1-661 et seq.
Washington: Rev. Code Wash. (ARCW) § 65.24.010 et seq.
Wisconsin: Wis. Stat. § 706.25.
Wyoming: Wyo. Stat. § 34-1-401 et seq.

§ 89-5-103. Definitions.

In this article:

(1) "Document" means information that is:

(a) Inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(b) Eligible to be recorded in the land records maintained by the chancery clerk.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic document" means a document that is received by the chancery clerk in an electronic form.

(4) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(5) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(6) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

HISTORY: Laws, 2011, ch. 364, § 2, eff from and after July 1, 2011.

§ 89-5-105. Validity of electronic documents.

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this article.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

HISTORY: Laws, 2011, ch. 364, § 3, eff from and after July 1, 2011.

§ 89-5-107. Recording of documents.

(a) In this section, "paper document" means a document that is received by the chancery clerk in a form that is not electronic.

(b) A chancery clerk:

(1) Who implements any of the functions listed in this section shall do so in compliance with standards established by the commission.

(2) May receive, index, store, archive, and transmit electronic documents.

(3) May provide for access to, and for search and retrieval of, documents and information by electronic means.

(4) Who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index.

(5) May convert paper documents accepted for recording into electronic form.

(6) May convert into electronic form information recorded before the chancery clerk began to record electronic documents.

(7) May accept electronically any fee or tax that the chancery clerk is authorized to collect.

(8) May agree with other officials of a state or a political subdivision thereof, or of the United States, on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees and taxes.

HISTORY: Laws, 2011, ch. 364, § 4, eff from and after July 1, 2011.

Cross References — Mississippi Electronic Recording Commission, see § 89-5-109.

§ 89-5-109. Administration and standards.

(a) The Mississippi Electronic Recording Commission consisting of eleven

(11) members is created to adopt standards to implement this article. The membership of the commission shall comprise the following:

(1) A person appointed by the Governor;

(2) A person appointed by the Lieutenant Governor;

(3) A person appointed by the Speaker of the House of Representatives;

(4) Three (3) members of the Chancery Clerks' Association;

(5) A person appointed by the Mississippi Association of Supervisors;

(6) The director of the Mississippi Information Technology Services or his designee; and

(7) Three (3) persons appointed by the Secretary of State.

Appointed members of the commission shall serve a term of two (2) years from the date of appointment as evidenced by letters to the Secretary of the Senate and the Clerk of the House of Representatives, with the appointment letter last received being the effective date of appointment. Any member serving by virtue of appointment shall serve until a successor is duly appointed. Appointed members shall be eligible for reappointment at the end of their terms.

(b) Appointments are to be made no later than October 1, 2011, and the initial meeting of the commission is to be held no later than November 1, 2011. The initial meeting is to be called at a time and place designated by the Secretary of State who shall preside until a permanent chair is elected. The election of a permanent chair shall be held at the initial meeting. The chair shall serve during the chair's tenure but shall not serve consecutive terms as chair. The commission shall establish rules to govern the conduct of its meetings and shall elect such officers as provided in the rules. A quorum shall consist of no fewer than six (6) members.

(c) To keep the standards and practices of chancery clerks in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially this article and to keep the technology used by chancery clerks in this state compatible with technology used by recording offices in other jurisdictions that enact substantially this article, the commission, so far as is consistent with the purposes, policies, and provisions of this article, in adopting, amending, and repealing standards shall consider:

(1) Standards and practices of other jurisdictions;

(2) The most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association;

(3) The views of interested persons and governmental officials and entities;

(4) The needs of counties of varying size, population, and resources; and

(5) Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

HISTORY: Laws, 2011, ch. 364, § 5, eff from and after July 1, 2011.

§ 89-5-111. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

HISTORY: Laws, 2011, ch. 364, § 6, eff from and after July 1, 2011.

§ 89-5-113. Relation to Electronic Signatures in Global and National Commerce Act.

This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 USCS Section 7001, et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 USCS Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 USCS Section 7003(b)).

HISTORY: Laws, 2011, ch. 364, § 7, eff from and after July 1, 2011.

CHAPTER 6.

MISSISSIPPI PLANE COORDINATE SYSTEM

Sec.

89-6-1. Description of systems of plane coordinates.
89-6-3. Plane coordinate values.
89-6-5. Definitions applicable to Mississippi Coordinate System of 1927.
89-6-7. Definitions applicable to Mississippi Coordinate System of 1983.
89-6-9. Explanation of terms.
89-6-11. Recording coordinates; requirements for recognition.
89-6-13. Use of system of plane coordinates to describe location of point within state.
89-6-15. Effective date for usage of systems.
89-6-17. Conversion of distances or coordinates between English and metric unit.
89-6-19. Use of metes and bounds descriptions or lot and block descriptions.

§ 89-6-1. Description of systems of plane coordinates.

(1) The systems of plane coordinates established and maintained by the National Ocean Service/National Geodetic Survey (formerly the United States Coast and Geodetic Survey), or its successors, for defining and stating the geographic position or location of points on the surface of the earth within the State of Mississippi are hereafter to be known and designated as the Mississippi Coordinate System of 1927 (MCS'27) and the Mississippi Coordinate System of 1983 (MCS'83). These systems divide the area within the state into an "East Zone" and a "West Zone."

(2)(a) The area now included in the following eastern counties shall constitute the East Zone: Alcorn, Attala, Benton, Calhoun, Chickasaw, Choctaw, Clarke, Clay, Covington, Forrest, George, Greene, Hancock, Harrison, Itawamba, Jackson, Jasper, Jones, Kemper, Lafayette, Lamar, Lauderdale, Leake, Lee, Lowndes, Marshall, Monroe, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Perry, Pontotoc, Prentiss, Scott, Smith, Stone, Tippah, Tishomingo, Union, Wayne, Webster and Winston.

(b) The area now included in the following western counties shall constitute the West Zone: Adams, Amite, Bolivar, Carroll, Claiborne, Coahoma, Copiah, DeSoto, Franklin, Grenada, Hinds, Holmes, Humphreys, Issaquena, Jefferson, Jefferson Davis, Lawrence, Leflore, Lincoln, Madison, Marion, Montgomery, Panola, Pike, Quitman, Rankin, Sharkey, Simpson, Sunflower, Tallahatchie, Tate, Tunica, Walthall, Warren, Washington, Wilkinson, Yalobusha and Yazoo.

(3) When any survey extends from one (1) into the other of the above coordinate zones, the position of all points involved may be referred to either of the two (2) zones.

HISTORY: Laws, 1991, ch. 462, § 1, eff from and after January 1, 1992.

§ 89-6-3. Plane coordinate values.

The plane coordinate values for a point on the earth's surface, used to express the geographic position or location of such point in the appropriate zone of the systems described in Section 89-6-1, shall consist of two (2) distances expressed in U.S. Survey Feet and decimals of a foot when using the Mississippi Coordinate System of 1927 and expressed in meters and decimals of a meter or U.S. Survey Feet and decimals of a foot when using the Mississippi Coordinate System of 1983. One (1) of these distances, to be known as the "Y" or "N-coordinate," shall give the position in a north and south direction; the other, to be known as the "X" or "E-coordinate," shall give the position in an east and west direction. These coordinates shall be made to depend upon and conform to the plane rectangular coordinate values for the monumented points of the National Geodetic Reference System as published by the National Ocean Service/National Geodetic Survey (formerly the United States Coast and Geodetic Survey), or its successors, and whose plane coordinates have been computed on the system defined in this chapter.

HISTORY: Laws, 1991, ch. 462, § 2; Laws, 2006, ch. 380, § 1, eff from and after passage (approved Mar. 13, 2006).

§ 89-6-5. Definitions applicable to Mississippi Coordinate System of 1927.

For purposes of more precisely defining the Mississippi Coordinate System of 1927, the following definition by the United States Coast and Geodetic Survey (now the National Ocean Service/National Geodetic Survey) is adopted:

(a) The "Mississippi Coordinate System of 1927 East Zone" is a transverse Mercator projection of the Clarke spheroid of 1866, having a central meridian eighty-eight (88) degrees fifty (50) minutes west of Greenwich, on which meridian the scale is set at one (1) part in twenty-five thousand (25,000) too small. The origin of coordinates is at the intersection of the meridian eighty-eight (88) degrees fifty (50) minutes west of Greenwich and the parallel twenty-nine (29) degrees forty (40) minutes north latitude. This origin is given the coordinates: X 500,000 feet and Y 0 feet.

(b) The "Mississippi Coordinate System of 1927 West Zone" is a transverse Mercator projection of the Clarke spheroid of 1866, having a central meridian ninety (90) degrees twenty (20) minutes west of Greenwich, on which meridian the scale is set at one (1) part in seventeen thousand (17,000) too small. The origin of coordinates is at the intersection of the meridian ninety (90) degrees twenty (20) minutes west of Greenwich and the parallel thirty (30) degrees thirty (30) minutes north latitude. This origin is given the coordinates: X 500,000 feet and Y 0 feet.

HISTORY: Laws, 1991, ch. 462, § 3, eff from and after January 1, 1992.

§ 89-6-7. Definitions applicable to Mississippi Coordinate System of 1983.

For purposes of more precisely defining the Mississippi Coordinate System of 1983, the following definition by the National Ocean Service/National Geodetic Survey is adopted:

(a) The "Mississippi Coordinate System of 1983 East Zone" is a transverse Mercator projection of the North American Datum of 1983, having a central meridian of eighty-eight (88) degrees fifty (50) minutes west of Greenwich, on which meridian the scale is set at one (1) part in twenty thousand (20,000) too small. The origin of coordinates is at the intersection of the meridian eighty-eight (88) degrees fifty (50) minutes west of Greenwich and the parallel twenty-nine (29) degrees thirty (30) minutes north latitude. This origin is given the coordinates: N 0 meters and E 300,000 meters.

(b) The "Mississippi Coordinate System of 1983 West Zone" is a transverse Mercator projection of the North American Datum of 1983, having a central meridian ninety (90) degrees twenty (20) minutes west of Greenwich, on which meridian the scale is set at one (1) part in twenty thousand (20,000) too small. The origin of coordinates is at the intersection of the meridian ninety (90) degrees twenty (20) minutes west of Greenwich and the parallel twenty-nine (29) degrees thirty (30) minutes north latitude. This origin is given the coordinates: N 0 meters and E 700,000 meters.

HISTORY: Laws, 1991, ch. 462, § 4, eff from and after January 1, 1992.

§ 89-6-9. Explanation of terms.

The use of the term "Mississippi Coordinate System of 1927" (MCS'27) or "Mississippi Coordinate System of 1983" (MCS'83) on any map, report of survey, or other document shall be limited to coordinates based on the Mississippi coordinate systems as defined in this chapter.

HISTORY: Laws, 1991, ch. 462, § 5, eff from and after January 1, 1992.

§ 89-6-11. Recording coordinates; requirements for recognition.

No coordinates based on either Mississippi coordinate system, purporting to define the position of a point, shall be recorded on any plat or in any public record unless the coordinates are derived from an accurate connection to an identified existing or newly established permanently-monumented third order Class I(1:10,000) or higher order station of the National Geodetic Reference System. Standards and specifications of the Federal Geodetic Control Committee (FGCC) or its successor in force on the date of survey shall apply. Published existing control stations or the acceptance with intent to publish the newly established station by the National Ocean Service/National Geodetic Survey will constitute evidence of adherence to the FGCC specifications.

HISTORY: Laws, 1991, ch. 462, § 6, eff from and after January 1, 1992.

§ 89-6-13. Use of system of plane coordinates to describe location of point within state.

For purposes of describing the location of any point in the State of Mississippi, it shall be considered a complete, legal and satisfactory description of such location to give the position of such point on the system of plane coordinates defined in this chapter, provided the connection to the Mississippi Coordinate System is made in accordance with the provisions of this chapter and the standards of practice for surveying as adopted by the Board of Licensure for Professional Engineers and Surveyors. Whenever coordinates are affixed to any point which has previously been described by another system, the coordinates shall be construed as additional evidence of the location of the same point. In the event of any conflict as to the point or its location, the common rules of evidence shall be used to resolve the conflict. When used to reference the position of a point to be cited in recorded description of real property, the description must be written in a form that is tied to the existing land system.

HISTORY: Laws, 1991, ch. 462, § 7; Laws, 2006, ch. 380, § 2, eff from and after passage (approved Mar. 13, 2006).

§ 89-6-15. Effective date for usage of systems.

The Mississippi Coordinate System of 1927 shall not be used after December 31, 1999; the Mississippi Coordinate System of 1983 shall be the sole system after such date.

HISTORY: Laws, 1991, ch. 462, § 8, eff from and after January 1, 1992.

§ 89-6-17. Conversion of distances or coordinates between English and metric unit.

Any conversion of distances or coordinates between the English and metric unit shall be made using the following conversion factor: one (1) meter equals 3.280833333 ⅓ U.S. Survey feet. A minimum of ten (10) significant figures shall be used when converting coordinates.

HISTORY: Laws, 1991, ch. 462, § 9, eff from and after January 1, 1992.

§ 89-6-19. Use of metes and bounds descriptions or lot and block descriptions.

No provision of this chapter shall prohibit or preclude the use of metes and bounds descriptions or lot and block descriptions.

HISTORY: Laws, 1991, ch. 462, § 10, eff from and after January 1, 1992.

CHAPTER 7.

LANDLORD AND TENANT

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§ 89-7-1. Goods not to be removed until rent paid.

No goods or chattels, lying or being in or upon any messuage, lands or tenements, leased or rented for life, years, at will, or otherwise, shall at any time be liable to be taken by virtue of any writ of execution, or other process whatever, unless the party so taking the same shall, before the removal of the goods or chattels from such premises, pay or tender to the landlord or lessor thereof, all the unpaid rent for the said premises, whether the day of payment shall have come or not, provided it shall not amount to more than one (1) year's rent; and the party suing out such execution or other process, paying or tendering to such landlord or lessor the rent unpaid, not to exceed one (1) year's rent, may proceed to execute his judgment or process; and the officer levying the same shall be empowered and required to levy and pay to the plaintiff as well the money so paid for rent, as the money due under the process, and when the rent contracted for is payable, not in money, but in other things, the creditor shall pay the landlord the money value of such things.

HISTORY: Codes, 1906, § 2851; Hemingway's 1917, § 2349; 1930, § 2175; 1942, § 897; Laws, 1894, ch. 52.

Cross References — Provision that the state shall have all the liens, rights, and remedies accorded to landlords in this chapter, see § 29-1-107.

Liens generally, see §§ 85-7-1 through 85-7-9.

Rights, obligations and remedies available under Sections 89-7-1 through 89-7-125 not altered or abridged by rights, obligations and remedies available under Chapter 8 of Title 89, see § 89-8-3.

JUDICIAL DECISIONS

1. In general.

Landlord Lien Statute affords unpaid landlord no rights in property of third persons on landlord's premises. By analogy, landlord should not acquire lien under § 89-7-51(2) on property not belonging to lessee. Hicks v. Thomas, 516 So. 2d 1344, 1987 Miss. LEXIS 2949 (Miss. 1987).

The lien for the enforcement of which the statute provides is that inherent in the relation of landlord and tenant and therefore is not one created by legal proceedings within the provisions of the Bankruptcy Act that liens obtained through legal proceedings against an insolvent within four months prior to the filing of the petition of bankruptcy shall be deemed void. Irby v. Corey, 95 F.2d 963, 1938 U.S. App. LEXIS 4262 (5th Cir. Miss. 1938).

Seizure and removal of automobile trailers from leased premises under attachment writ by landlord for nonpayment of rent did not affect purchase money liens on trailers, since neither vendor nor purchaser thereof did anything in furtherance of the removal. Dorsey v. Latham, 194 Miss. 253, 11 So. 2d 897, 1943 Miss. LEXIS 46 (Miss. 1943).

The provision that goods shall not be taken from rented premises under process until rent is paid does not give landlord lien on property on leased premises for rent. White v. Miazza-Woods Const. Co., 122 Miss. 213, 84 So. 181, 1920 Miss. LEXIS 428 (Miss. 1920); Walker v. First Nat'l Bank, 168 Miss. 487, 151 So. 740, 1934 Miss. LEXIS 350 (Miss. 1934).

Where estate was insolvent, rent due landlord for store occupied by decedent before death, while claim superior to that of general creditors, was not preferred over claims for expenses of last illness, funeral, and administration, where administrator sold goods in store building under court order. Walker v. First Nat'l Bank, 168 Miss. 487, 151 So. 740, 1934 Miss. LEXIS 350 (Miss. 1934).

If clause in lease prohibiting removal of property while rent was unpaid created equitable lien, it was not enforceable by statutory remedy of distress for rent. Lake v. Morson, 164 Miss. 401, 145 So. 337, 1933 Miss. LEXIS 237 (Miss. 1933).

Rent accrued prior to the filing of a petition in bankruptcy is, however, properly allowable as a secured claim against the proceeds of the trustee's sale of the tenant's goods found on the premises at the time of the bankruptcy. In re Wall, 60 F.2d 573, 1932 U.S. Dist. LEXIS 1360 (D. Miss. 1932).

Under this provision a landlord has no lien for rent upon his tenant's goods until a distress warrant is levied thereon, but has a right only to exact payment of rent before they can be taken off the premises by legal process. American Stores Co. v. Gerlach, 55 F.2d 658, 1932 U.S. App. LEXIS 3786 (3d Cir. Pa. 1932).

This provision does not make rent to accrue subsequent to bankruptcy a fixed liability absolutely owing at the time of the adjudication and as such provable against a bankrupt's estate. In re S. & H. Katz, 6 F.2d 581, 1925 U.S. Dist. LEXIS 1156 (D. Miss. 1925).

In absence of seizure of tenant's goods by legal process, landlord has only inchoate right which may develop into a preference. Engleburg v. Tonkel, 140 Miss. 513, 106 So. 447, 1925 Miss. LEXIS 286 (Miss. 1925).

Landlord has no lien for rent except on agricultural products. Engleburg v. Tonkel, 140 Miss. 513, 106 So. 447, 1925 Miss. LEXIS 286 (Miss. 1925).

Claim of lessor of storehouse is preference claim against insolvent tenant, and lessor had right to payment out of proceeds of sale though she did not assert her claim within thirty days after removal of the goods pursuant to sale. Epstein v. Farr, 112 Miss. 530, 73 So. 572, 1916 Miss. LEXIS 143 (Miss. 1916).

This section [Code 1942, § 897] does not subject property of third persons on leased premises to liability for rent. Brunswick-Balke-Collender Co. v. Murphy, 89 Miss. 264, 42 So. 288, 1906 Miss. LEXIS 33 (Miss. 1906).

§ 89-7-3. Tenant not bound to pay rent for, or to restore, buildings destroyed; exception.

A tenant shall not be bound to pay rent for buildings after their destruction by fire or otherwise, nor shall a covenant or promise by a lessee to leave or restore the premises in good repair have the effect to bind him to erect or pay for such buildings as may be so destroyed, unless in respect to the matters aforesaid there was negligence or fault on his part, or unless he has expressly stipulated to be so bound.

HISTORY: Codes, 1880, §§ 1239, 1240; 1892, §§ 2497, 2498; 1906, §§ 2834, 2835; Hemingway's 1917, §§ 2332, 2333; 1930, § 2176; 1942, § 898.

JUDICIAL DECISIONS

1. In general.

Where a building was destroyed by fire and the fire was not caused by negligence or fault of the lessee and the lessee did not expressly stipulate to pay for rent after destruction by the fire, the lessee was entitled to a reduction in the monthly rental to be paid for the leased premises and the lessee did not lose his right when he rebuilt the building at his own expense. Miller v. Miller, 222 Miss. 588, 76 So. 2d 705, 1955 Miss. LEXIS 641 (Miss. 1955).

A tenant is not liable for accidental damages or destruction by fire, unless he has contracted to assume liability for such damages. Miller v. Miller, 217 Miss. 650, 64 So. 2d 739, 1953 Miss. LEXIS 475 (Miss. 1953).

In an action brought by lessee against lessor of a gasoline station seeking reduction of monthly rental to be paid on account of destruction of the main service station building by fire, or, in the alternative, to require the lessors to restore the building to its former condition, wherein the lessors filed a cross bill to recover for damages to the building on the ground that the fire was the result of lessee's negligence, evidence sustained a finding that there was insufficient proof that fire was caused by the negligence of lessee or his employees. Miller v. Miller, 217 Miss. 650, 64 So. 2d 739, 1953 Miss. LEXIS 475 (Miss. 1953).

In the absence of an agreement to the contrary, the tenant is not liable for damages to or the destruction of a building by fire unless there was negligence or fault on his part. Miller v. Miller, 217 Miss. 650, 64 So. 2d 739, 1953 Miss. LEXIS 475 (Miss. 1953).

This section [Code 1942, § 898] affects contract rights of parties to a lease, but concluding clause is merely declaratory of common law right to sue tenant for negligent act, resulting in damage. Roell v. Brooks, 205 Miss. 255, 38 So. 2d 716, 1949 Miss. LEXIS 427 (Miss. 1949).

In action under this section [Code 1942, § 898] by landlord against tenant for damages to leased premises by fire alleged to have been caused by negligence of defendant's manager in leaving gas heater burning during his absence from building, burden of proof is on plaintiff to show by preponderance of evidence that defendant did not use reasonable care in maintenance of reasonably safe gas heater and that such failure was proximate cause of fire and resulting damage. Roell v. Brooks, 205 Miss. 255, 38 So. 2d 716, 1949 Miss. LEXIS 427 (Miss. 1949).

Tenant, although bound under lease to restore building destroyed by fire, held not entitled to proceeds of insurance taken out by the lessor. Panhandle Oil Co. v. Therrell, 158 Miss. 810, 131 So. 263, 1930 Miss. LEXIS 109 (Miss. 1930).

Watertank, pump, and engine placed on leased premises by tenant after destruction by windstorm did not become fixtures. Frederick v. Smith, 147 Miss. 437, 111 So. 847, 1927 Miss. LEXIS 279 (Miss. 1927).

If a lessee covenants "to take good care of the leased premises and to return the same in as good order as at the beginning of the lease, ordinary wear and tear, and damage by fire, wind and water excepted, and to make at his own expense all necessary repairs," he is obliged to make all such repairs as are necessary to keep the premises in such condition. The exceptions cannot be construed to relieve him of such obligations. Waddell v. De Jet, 76 Miss. 104, 23 So. 437, 1898 Miss. LEXIS 57 (Miss. 1898).

An insolvent tenant who violates his obligation to repair, to the extent of endangering the destruction of the leased premises, subjects himself to a suit for the cancellation of his lease. Waddell v. De Jet, 76 Miss. 104, 23 So. 437, 1898 Miss. LEXIS 57 (Miss. 1898).

No damages are allowable, but the tenant is entitled under the statute to an abatement of rent in the proportion that the value of the use of the ginhouse and machinery accidentally destroyed by fire during his term, bears to the value of the use of the whole premises. Taylor v. Hart, 73 Miss. 22, 18 So. 546, 1895 Miss. LEXIS 84 (Miss. 1895).

RESEARCH REFERENCES

ALR.

Liability of tenant for damage to the leased property due to his acts or neglect. 10 A.L.R.2d 1012.

Statute requiring property to be kept in good repair as affecting landlord's liability for personal injury to tenant or his privies. 17 A.L.R.2d 704.

Extent of lessee's obligation under express covenant as to repairs. 20 A.L.R.2d 1331.

Landlord's duty under express covenant to repair, rebuild, or restore, where property is damaged or destroyed by fire. 38 A.L.R.2d 682.

Condition of premises within contemplation of provision of lease or statute for cessation of rent or termination of lease in event of destruction of or damage to property as result of fire, calamity, the elements, act of God, or the like. 61 A.L.R.2d 1445.

Modern status of rules as to existence of implied warranty of habitability or fitness for use of leased premises. 40 A.L.R.3d 646.

Landlord's failure to repair as aggravated negligence or similar fault. 40 A.L.R.3d 795.

Validity and construction of statute or ordinance authorizing withholding or payment into escrow of rent for period during which premises are not properly maintained by landlord. 40 A.L.R.3d 821.

Tenant's right, where landlord fails to make repairs, to have them made and set off cost against rent. 40 A.L.R.3d 1369.

Modern status of landlord's tort liability for injury or death of tenant or third person caused by dangerous condition of premises. 64 A.L.R.3d 339.

Landlord's liability for injury or death due to defects in areas of building (other than stairways) used in common by tenants. 65 A.L.R.3d 14.

Liability of landlord for personal injury or death due to inadequacy or lack of lighting on portion of premises used in common by tenants. 66 A.L.R.3d 202.

Landlord's liability for personal injury or death due to defects in appliances supplied for use of different tenants. 66 A.L.R.3d 374.

Landlord's liability for injury or death due to defects in exterior steps or stairs used in common by tenants. 67 A.L.R.3d 490.

Landlord's liability for injury or death caused by defective condition of interior steps or stairways used in common by tenants. 67 A.L.R.3d 587.

Modern status of rule as to tenant's rent liability after injury to or destruction of demised premises. 99 A.L.R.3d 738.

Commercial leases: application of rule that lease may be canceled only for "material" breach. 54 A.L.R.4th 595.

Implied warranty of fitness or suitability in commercial leases-modern status. 76 A.L.R.4th 928.

Measure and elements of damages for lessee's breach of covenant as to repairs. 45 A.L.R.5th 251.

Time within which tenant's right to remove trade fixtures must be exercised. 109 A.L.R.5th 421.

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant §§ 678 et seq., 812 et seq.

16 Am. Jur. Pl & Pr Forms (Rev), Landlord and Tenant, Form 111 (instruction to jury on landlord's statutory duty to maintain leased premises in habitable condition).

16 Am. Jur. Pl & Pr Forms (Rev), Landlord and Tenant, Form 296 (complaint by lessee of apartment unit; failure of landlord to maintain water and septic system).

17 Am. Jur. Pl & Pr Forms (Rev), Mobile Homes (complaint by lessee of lot in mo-

bile home park for failure of landlord to maintain water and septic systems).

11A Am. Jur. Legal Forms 2d, Leases of Real Property §§ 161:266 et seq. (effect of injury to or destruction of premises on payment of rent).

11A Am. Jur. Legal Forms 2d, Leases of Real Property §§ 161:544 et seq. (rebuilding or restoration).

7 Am. Jur. Proof of Facts 3d 655, Material breach of Commercial Lease.

CJS.

51C C.J.S., Landlord and Tenant §§ 366(1) et seq.

§ 89-7-5. Action for use and occupation where there is no contract.

Where there is no contract, or where the agreement is not in writing, a landlord may maintain an action to recover a reasonable satisfaction for the use and occupation of the lands held and enjoyed by another. If on the trial of such action there appear in evidence any demise or agreement the plaintiff shall not on that account be nonsuited, but may make use thereof as evidence of the amount to be recovered.

HISTORY: Codes, 1857, ch. 41, art. 19; 1871, § 1638; 1880, § 1323; 1892, § 2538; 1906, § 2876; Hemingway's 1917, § 2374; 1930, § 2177; 1942, § 899.

Cross References — Requirement that leases for a term of more than one year be in writing, see § 15-3-1.

Provision that the state shall have all the liens, rights, and remedies accorded to landlords in this chapter, see § 29-1-107.

Rights, obligations and remedies available under Sections 89-7-1 through 89-7-125 not altered or abridged by rights, obligations and remedies available under Chapter 8 of Title 89, see § 89-8-3.

Rental by husband of wife's property, see §§ 93-3-1, 93-3-7.

JUDICIAL DECISIONS

1. In general.

In an action by the lessor of commercial property to reject the lessee the lessor was entitled to recover $600 for the period of 30 days past the June 30, 1981 termination date of the lease, where a lease provision granting the lessee 30 days in which to remove the improvements placed on the lease premises was effective to extent the term of the lease for an additional 30 days; additionally, the lessor was entitled to recover a reasonable rental from August 1 to August 15, 1981, where August 15, 1981 was the date on which lessee vacated the premises, and where the lessor had sought reasonable rent after expiration of the lease. Terracina Motor Co. v. Sarullo, 419 So. 2d 1335, 1982 Miss. LEXIS 2175 (Miss. 1982).

"Reasonable satisfaction" within the meaning of this section [Code 1942, § 879], is an issue of fact. Feltenstein v. Newell, 248 Miss. 880, 162 So. 2d 253, 1964 Miss. LEXIS 318 (Miss. 1964).

Where a tenant removing from leased premises leaves thereon, and abandons to the seller property covered by a conditional sale agreement, the landlord may recover from the seller, in absence of agreement, only the reasonable cost of removing the property to dead storage, and the cost of such storage. Feltenstein v. Newell, 248 Miss. 880, 162 So. 2d 253, 1964 Miss. LEXIS 318 (Miss. 1964).

A tenant upon shares is liable for damages as reasonable rental upon his failure to cultivate the land. Sledge v. Potts, 202 Miss. 480, 32 So. 2d 262, 1947 Miss. LEXIS 302 (Miss. 1947).

Where under a written contract a tenant agreed to pay a percentage of certain crops as rent and reasonable rent for any and all other crops grown on the land, his abandonment of the land and failure to cultivate subjected him to a liability for reasonable value of the rental of the land notwithstanding uncertainty as to the amount of profits. Sledge v. Potts, 202 Miss. 480, 32 So. 2d 262, 1947 Miss. LEXIS 302 (Miss. 1947).

Landowner is entitled to compensation for mooring of boats in front of his property for periods exceeding reasonable use for navigation; where boats are not moored constantly and permanently in front of property, owner is entitled to compensation only for time boats actually occupy banks beyond reasonable navigation uses; instruction authorizing landowner to recover for use and occupancy by mooring boats in front of bank for full period of limitation held error under evidence. Louisiana & M. R. T. Co. v. Long, 159 Miss. 654, 131 So. 84, 1930 Miss. LEXIS 358 (Miss. 1930).

Under lease of land for its mill by lumber company containing option to renew, where it acquired timber lands about its mill sufficient to furnish material for several years beyond expiration of first lease, no specific notice to lessor of intention to renew required. Crenshaw-Gary Lumber Co. v. Norton, 111 Miss. 720, 72 So. 140, 1916 Miss. LEXIS 377 (Miss. 1916).

Lessor's covenant to renew lease runs with land. Crenshaw-Gary Lumber Co. v. Norton, 111 Miss. 720, 72 So. 140, 1916 Miss. LEXIS 377 (Miss. 1916).

Landlord entitled to reasonable rental after notice to vacate upon expiration of term, but not for time permitted tenant to remain in possession under circumstances indicating no rent charged. Thomas Hinds Lodge v. Presbyterian Church of Fayette, 103 Miss. 130, 60 So. 66, 1912 Miss. LEXIS 146 (Miss. 1912).

Where one pending negotiations, looking to an entire contract with the owner for the yearly lease of lands for several years, and a subsequent purchase, enters into possession, and the negotiations fail, he is not liable for the rent stipulated for in the negotiations, but for the reasonable rental value of the premises. Sutton v. Graham, 80 Miss. 636, 31 So. 909, 1902 Miss. LEXIS 274 (Miss. 1902).

If a tenant from year to year, upon the death of a landlord, asserts title himself and refuses to surrender at the end of the year, or to longer pay rent, the heirs who recover in ejectment are entitled to charge him thereafter with the reasonable rental value, regardless of the former contract price. Thomas v. Thomas, 69 Miss. 564, 13 So. 666, 1891 Miss. LEXIS 139 (Miss. 1891).

This statute gives the right in all cases where the possession is held in recognition of and not adversely to the title of the party suing. Newberg & Anderson v. Cowan, 62 Miss. 570, 1885 Miss. LEXIS 110 (Miss. 1885).

RESEARCH REFERENCES

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant §§ 503, 504.

16 Am. Jur. Pl & Pr Forms (Rev) Landlord and Tenant, Forms 11, 12 (complaint, petition, or declaration to recover reasonable value of use and occupation).

CJS.

51C C.J.S., Landlord and Tenant §§ 552 et seq.

§ 89-7-7. Remedy by action for rent in arrear.

A person having rent in arrear or due upon any lease or demise of lands for life or lives, for years, at will, or otherwise, may bring an action for such arrears of rent against the person who ought to have paid the same or his legal representative.

HISTORY: Codes, 1857, ch. 41, art. 14; 1871, § 1633; 1880, § 1322; 1892, § 2537; 1906, § 2875; Hemingway's 1917, § 2373; 1930, § 2178; 1942, § 900.

Cross References — Provision that the state shall have all the liens, rights, and remedies accorded to landlords in this chapter, see § 29-1-107.

Rights, obligations and remedies available under Sections 89-7-1 through 89-7-125 not altered or abridged by rights, obligations and remedies available under Chapter 8 of Title 89, see § 89-8-3.

Right of landlord to remove tenant in manner prescribed by this Chapter for nonpayment of rent, not circumscribed by termination procedure specified in section 89-8-13, see § 89-8-13.

JUDICIAL DECISIONS

1. In general.

A sublessee incurs no liability to the lessor merely because of the subletting either for the payment of rent reserved in the original lease or for the performance of the other covenants on the part of the lessee, but the lessor and lessee may establish between themselves relationship of landlord and tenant by express agreement or by some affirmative action showing an election to treat a sublessee as the lessor's tenant. Goldberg v. L. H. Realty Corp., 227 Miss. 345, 86 So. 2d 326, 1956 Miss. LEXIS 696 (Miss. 1956).

Where under a written contract a tenant agreed to pay a percentage of certain crops as rent and a reasonable rent for any and all other crops grown on the land, his abandonment of the land and failure to cultivate subjected him to liability for reasonable value of the rental of the land notwithstanding uncertainty as to the amount of profits. Sledge v. Potts, 202 Miss. 480, 32 So. 2d 262, 1947 Miss. LEXIS 302 (Miss. 1947).

RESEARCH REFERENCES

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant §§ 502 et seq.

16 Am. Jur. Pl & Pr Forms (Rev) Landlord and Tenant, Form 1 (complaint, petition, or declaration to recover rent due under lease).

CJS.

51C C.J.S., Landlord and Tenant §§ 552 et seq.

§ 89-7-9. Death of tenant for life; apportionment of rent.

When a tenant for life who shall have demised lands, shall die on or after the day when any rent became payable, his executor or administrator may recover from the under-tenant the whole rent due; and if he die before the day when any rent is to become due, he may recover the proportion of the rent which accrued before the time of the death of the tenant. The tenant for the life of another, his executor or administrator, in case of the death of the person for whose life the estate is held, on or before the day when any rent shall become due shall have like remedy; and a like apportionment shall be made in the case of annuities.

HISTORY: Codes, Hutchinson's 1848, ch. 56, art. 5 (22); 1857, ch. 41, art. 20;

1871, § 1639; 1880, § 1328; 1892, § 2543; 1906, § 2881; Hemingway's 1917, § 2379; 1930, § 2179; 1942, § 901.

Cross References — Abatement of suit upon death of party, see §§ 91-7-237 et seq.

JUDICIAL DECISIONS

1. In general.

Amendment of statute, declaring rents arising from demise of land by life tenant apportionable, by adding words "and a like apportionment shall be made in the case of annuities" held not violative of constitutional guaranties of due process and equal protection of law in application to annuities arising under disability provisions of life policies as requiring apportionment notwithstanding express contract to contrary, where disability provisions contained no express stipulation that benefits should be apportionable. New York Life Ins. Co. v. Majet, 178 Miss. 440, 173 So. 412, 1937 Miss. LEXIS 218 (Miss. 1937).

Amendment of statute, declaring rents arising from demise of land by life tenant apportionable, by adding words "and a like apportionment shall be made in the case of annuities," held to make all annuities apportionable, so as to entitle beneficiary under life insurance policy to payment of proportionate part of disability benefits provided for thereby in addition to face amount of policy on insured's death before anniversary date on which annual payment would have become due. New York Life Ins. Co. v. Majet, 173 Miss. 870, 161 So. 156, 1935 Miss. LEXIS 211 (Miss. 1935).

RESEARCH REFERENCES

ALR.

Life tenant's death as affecting rights under lease given by him. 14 A.L.R.4th 1054.

Death of lessee as terminating lease. 42 A.L.R.4th 963.

Am. Jur.

51 Am. Jur. 2d, Life Tenants and Remaindermen §§ 151 et seq.

CJS.

31 C.J.S., Estates §§ 50-52.

§ 89-7-11. Rent assets in hands of personal representative.

If a person lease his land and die, the rent to accrue for the land during the year of his death shall be payable to the personal representative of the decedent, who shall have the same remedy therefor as the decedent would have had if he had lived.

HISTORY: Codes, 1880, § 1327; 1892, § 2542; 1906, § 2880; Hemingway's 1917, § 2378; 1930, § 2180; 1942, § 902.

Cross References — Liability of person in possession of escheated property for rent of real estate, see § 89-11-13.

Rental of land as asset of estate, see § 91-7-91.

JUDICIAL DECISIONS

1. In general.

Although the personal representative of a decedent has the power to collect rents under this section [Code 1942, § 902], such rents collected are the property of the respective devisees of the real estate upon which the rents accrue. Gaines v. Klein, 203 Miss. 271, 34 So. 2d 489, 1948 Miss. LEXIS 262 (Miss. 1948).

The statute applies to cases of testacy as well as intestacy. Tucker v. Whitehead, 58 Miss. 762, 1881 Miss. LEXIS 34 (Miss. 1881).

RESEARCH REFERENCES

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant §§ 502 et seq.

CJS.

51C C.J.S., Landlord and Tenant §§ 522 et seq.

§ 89-7-13. Executor or administrator may sue or distrain.

The executor or administrator of a person to whom rent is due and not paid at the time of his death may have an action for all such arrearages against the tenant or tenants who ought to have paid the rent so being behind in the lifetime of their testator or intestate, or against the executors or administrators of such tenants. Every executor or administrator of any person to whom such rent is due and not paid at the time of his death, may distrain for the arrearages of all such rents on the lands which were charged with the payment of such rents, and liable to the distress of the testator or intestate, so long as the same continue in the seizin or possession of the tenant who ought to have paid the rent to the testator or intestate in his lifetime, or in the seizin or possession of any person claiming the lands, only by and from the tenant, by purchase, gift, or descent, in like manner and form as the said executor's or administrator's testator or intestate might have done in his lifetime. The executors and administrators for the same distress may lawfully make avowry.

HISTORY: Codes, Hutchinson's 1848, ch. 56, art. 5 (20); 1857, ch. 41, art. 17; 1871, § 1636; 1880, § 1326; 1892, § 2541; 1906, § 2879; Hemingway's 1917, § 2377; 1930, § 2181; 1942, § 903.

Cross References — Powers of temporary administrator generally, see § 91-7-57.
Leases of land by executor or administrator to pay debts of deceased, see § 91-7-225.
Actions by executors or administrators, see §§ 91-7-231 et seq.

§ 89-7-15. Rights of assignees of lessor.

The grantees or assignees, and their heirs, personal representatives and assignees, of any lands let to lease, or of the reversion thereof, may have and enjoy the same advantages against the lessees, their personal representatives and assigns, by entry for the non-payment of rent, or for doing of waste or suffering any forfeiture, and may have and avail of all the covenants and agreements contained in the leases, demises or grants against the lessees, their personal representatives and assigns, which the lessors themselves or their heirs could have had or enjoyed.

HISTORY: Codes, Hutchinson's 1848, ch. 56, art. 5 (18); 1857, ch. 41, art. 15; 1871, § 1634; 1880, § 1324; 1892, § 2539; 1906, § 2877; Hemingway's 1917, § 2375; 1930, § 2182; 1942, § 904.

Cross References — Rights, obligations and remedies available under Sections 89-7-1 through 89-7-125 not altered or abridged by rights, obligations and remedies available under Chapter 8 of Title 89, see § 89-8-3.

JUDICIAL DECISIONS

1. In general.

Lease of portion of building being assignable at common law, Code 1906, §§ 2877, 2878, 4001 do not affect question of whether lessor's mortgagee charged with notice of assignment of unrecorded lease. Corinth Bank & Trust Co. v. Wallace, 111 Miss. 62, 71 So. 266, 1916 Miss. LEXIS 241 (Miss. 1916).

Code 1906, §§ 2877, 2878, merely enlarge and broaden rights of assignee of lease under certain circumstances. Corinth Bank & Trust Co. v. Wallace, 111 Miss. 62, 71 So. 266, 1916 Miss. LEXIS 241 (Miss. 1916).

Where lessee sublet premises subject to original lease, sublessee entitled to benefits of original lease, and to damages consequent upon lessee releasing water rights thereunder. Hairston v. Montgomery, 102 Miss. 364, 59 So. 793, 1912 Miss. LEXIS 65 (Miss. 1912).

Lessee cannot avoid lease because county and state in which land located not designated in body of lease, where same were designated in caption thereto and lease was acknowledged before officer and recorded in the county named. Gex v. Dill, 86 Miss. 10, 38 So. 193, 1905 Miss. LEXIS 7 (Miss. 1905).

The right of a tenant to renew a lease is assignable, and it may be exercised at any time during the original term unless it be limited by the grant or terminated by the parties; A landlord may demand of a tenant during the term the exercise of a right to renew the lease and if not exercised on demand, it will be terminated. McClintock v. Joyner, 77 Miss. 678, 27 So. 837, 1900 Miss. LEXIS 34 (Miss. 1900).

The right of re-entry for nonpayment of rent is not an estate in land, but a mere right or chose in action, and the assignee under Code 1892, § 660 (Code 1906, § 717), may sue and recover in his own name. Wright v. Hardy, 76 Miss. 524, 24 So. 697, 1898 Miss. LEXIS 96 (Miss. 1898).

The rights given to the assignee of a lessor by this section [Code 1942, § 904] apply only to estates for life or years, and not to estates in fee; lands let to lease are those conveyed only for life, years, or at will. Wright v. Hardy, 76 Miss. 524, 24 So. 697, 1898 Miss. LEXIS 96 (Miss. 1898).

Where an owner rents his lands and takes rent notes, and afterwards makes an assignment, conveying his lands, tenements, and hereditaments, the right to the rents passes to the assignee by the use of the word "hereditaments." Allen v. Smith Bros. Co., 72 Miss. 689, 18 So. 579, 1895 Miss. LEXIS 72 (Miss. 1895).

The purchaser of land at partition sale is entitled to the rent falling due after his purchase, if not expressly reserved, and may distrain therefor, notwithstanding a rent note previously given therefor had been assigned by the landlord to another, who contests the purchaser's right to such rent. Kessee v. Sloan, 69 Miss. 369, 11 So. 631, 1891 Miss. LEXIS 98 (Miss. 1891).

Rent is an incident to the reversion, and before maturity follows the title to the premises, except as otherwise provided by statute. Bloodworth v. Stevens, 51 Miss. 475, 1875 Miss. LEXIS 67 (Miss. 1875).

RESEARCH REFERENCES

ALR.

Measure and elements of damages for lessee's breach of covenant as to repairs. 45 A.L.R.5th 251.

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant §§ 420 et seq.

2B Am. Jur. Legal Forms 2d, Assignments § 25:165 (assignment-lease-acceptance and assumption of lessee's lease obligations-with consent of lessor).

CJS.

51C C.J.S., Landlord and Tenant §§ 258, 259.

§ 89-7-17. Grants of rents, good without attornment.

Grants of rents or reversions or remainders shall be good and effectual without attornment of the tenants; but a tenant who has paid the rent to the grantor before notice of the grant shall not suffer any damage thereby.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (30); 1857, ch. 36, art. 5; 1871, § 2288; 1880, § 1191; 1892, § 2499; 1906, § 2836; Hemingway's 1917, § 2334; 1930, § 2183; 1942, § 905.

RESEARCH REFERENCES

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant § 421.

11B Am. Jur. Legal Forms 2d, Leases of Real Property § 161:705 (lessor's right to assign rents).

CJS.

51C C.J.S., Landlord and Tenant § 259.

§ 89-7-19. Attornment of tenant to stranger void; exception.

The attornment of a tenant to a stranger shall be void unless it be with the consent of the landlord of such tenant, or pursuant to or in consequence of the judgment of a court of law or the decree of a court of equity.

HISTORY: Codes, Hutchinson's 1848, ch. 42, art. 1 (31); 1857, ch. 36, art. 6; 1871, § 2289; 1880, § 1192; 1892, § 2500; 1906, § 2837; Hemingway's 1917, § 2335; 1930, § 2184; 1942, § 906.

RESEARCH REFERENCES

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant § 104.

CJS.

51C C.J.S., Landlord and Tenant §§ 277-279.

§ 89-7-21. Rights of lessees against assignees of lessor.

All lessees of lands for a term of years, life or lives, their executors, administrators, or assigns, may have like action and advantage against all and every person or persons, their heirs and assigns, which have any gift or grant of the reversion of said lands, so leased, or any parcel thereof, for any condition, covenant, or agreement in their lease or leases, as the lessees, or any of them, might have had against the lessors and their heirs, only excepting the benefit and advantage of recoveries in value, by reason of any warranty in deed or law.

HISTORY: Codes, Hutchinson's 1848, ch. 56, art. 5 (19); 1857, ch. 41, art. 16; 1871, § 1635; 1880, § 1325; 1892, § 2540; 1906, § 2878; Hemingway's 1917, § 2376; 1930, § 2185; 1942, § 907.

Cross References — Rights, obligations and remedies available under Sections 89-7-1 through 89-7-125 not altered or abridged by rights, obligations and remedies available under Chapter 8 of Title 89, see § 89-8-3.

RESEARCH REFERENCES

ALR.

Covenant of lessee to insure as running with the land. 18 A.L.R.2d 1051.

Rights and remedies of tenant upon landlord's breach of covenant to repair. 28 A.L.R.2d 446.

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant §§ 93 et seq.

§ 89-7-23. Notice to terminate tenancy.

Notice to quit shall be necessary only where the term is not to expire at a fixed time. In all cases in which a notice is required to be given by the landlord or tenant to determine a tenancy, two (2) months' notice, in writing, shall be given where the holding is from year to year, and one (1) month's notice shall be given where the holding is by the half-year or quarter-year; and where the letting is by the month or by the week, one (1) week's notice, in writing, shall be given. This section shall not apply to rental agreements governed by the Residential Landlord and Tenant Act.

HISTORY: Codes, 1857, ch. 41, art. 21; 1871, § 1640; 1880, § 1330; 1892, § 2544; 1906, § 2882; Hemingway's 1917, § 2380; 1930, § 2224; 1942, § 946; Laws, 1991, ch. 478, § 15, eff from and after July 1, 1991, and shall apply to rental agreements entered into after such date.

Cross References — Residential Landlord and Tenant Act, see § 89-8-1, et seq.

Right of landlord to remove tenant in manner prescribed by this chapter for nonpayment of rent, not circumscribed by termination procedure specified in section 89-8-13, see § 89-8-13.

Amount of notice required to terminate tenancy governed by the Residential Landlord and Tenant Act, see § 89-8-19.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Tenant holding over.
3. Indefinite tenancies.

1. In general.

It is only where the rental term is not to expire at a fixed time that notice to quit becomes necessary. Price v. Moss, 214 Miss. 253, 58 So. 2d 661, 1952 Miss. LEXIS 465 (Miss. 1952).

In an unlawful entry and detainer action by one claiming title through a tax purchaser, preliminary notice to vacate the premises need not be given to tenants of one who was the owner prior to tax sale. McKay v. Shaffer, 202 Miss. 558, 32 So. 2d 746, 1947 Miss. LEXIS 317 (Miss. 1947).

A notice to vacate for various reasons given pursuant to permission of the area rent control office to proceed with legal eviction on the ground of nuisance did not place the eviction proceedings on the same basis as expiration of a month to month tenancy after due notice to vacate. Young v. Weaver, 202 Miss. 291, 32 So. 2d 202, 1947 Miss. LEXIS 275 (Miss. 1947).

Where tenancy, which had been held under definite, different contracts for 1933 and 1934, terminated on December 31, 1934, and proceeding was brought in January, 1935, after notice on January 9, 1935, to vacate, landlord's failure to give such notice before expiration of lease did not amount to waiver of right to possession; statute requiring two months' notice being inapplicable. Graham v. Cauthen,

175 Miss. 751, 168 So. 58, 1936 Miss. LEXIS 75 (Miss. 1936).

Landowner, demanding and receiving payment of annual rent from one entering on land, elected to constitute and acknowledge latter as tenant, thereby impliedly creating tenancy by year. Hamilton v. Federal Land Bank, 175 Miss. 462, 167 So. 642, 1936 Miss. LEXIS 68 (Miss. 1936).

Tenancy may be terminated by agreement without statutory written notice. Stacks v. Robson, 139 Miss. 600, 104 So. 354, 1925 Miss. LEXIS 171 (Miss. 1925).

Tenant from year to year notified that rent would be increased but not assenting thereto, did not by remaining on the land become liable for increase as she had right to hold until tenancy terminated in statutory manner. Bancroft v. Seashore Camp Ground School, 120 Miss. 446, 82 So. 314, 1919 Miss. LEXIS 106 (Miss. 1919).

Tenant from year to year entitled to two months' notice in writing of termination. Scruggs v. McGehee, 110 Miss. 10, 69 So. 1003, 1915 Miss. LEXIS 18 (Miss. 1915).

A mere licensee is not entitled to notice to quit. Johns v. McDaniel, 60 Miss. 486, 1882 Miss. LEXIS 86 (Miss. 1882).

2. Tenant holding over.

Where a tenancy was from month to month, beginning on the 10th of the month, the landlord, who gave the tenant written notice on April 5th to vacate on the 30th of that month, should not be denied double rent for the period the tenant held over after the 10th of May, on the ground that the notice fixed a time for vacation ten days earlier than he was entitled to fix, since the tenant could not have been misled by the notice, but knew that the landlord intended him to vacate not on the 30th of the month, but on the 10th of the next month, and that he had simply made a mistake in fixing the date. Gulley v. Mayo, 191 Miss. 143, 1 So. 2d 800, 1941 Miss. LEXIS 118 (Miss. 1941).

Tenant under implied tenancy from year to year had right to presume that such relation would continue for years into which he held over, in absence of statutory notice to contrary. Hamilton v. Federal Land Bank, 175 Miss. 462, 167 So. 642, 1936 Miss. LEXIS 68 (Miss. 1936).

Lessee who failed to renew lease before expiration of existing term held not entitled to notice to vacate. Copiah Hardware Co. v. Johnson, 135 Miss. 358, 100 So. 31, 1924 Miss. LEXIS 48 (Miss. 1924).

3. Indefinite tenancies.

Chancellor is in error in awarding increased rent to purchaser of property from date of decree awarding possession of property and rent due, but is correct in awarding to purchaser of property rent at agreed rate where tenant from month to month refused to pay increase in rent but remained on land and there was no statutory notice terminating tenancy. Williams v. Barlow, 205 Miss. 449, 38 So. 2d 914, 1949 Miss. LEXIS 442 (Miss. 1949).

Tenant by month for indefinite period of time who is notified by landlord of increase in rent does not, by merely remaining on land, become liable for increase, but is liable only for rent agreed upon until tenancy is terminated by landlord in statutory manner. Williams v. Barlow, 205 Miss. 449, 38 So. 2d 914, 1949 Miss. LEXIS 442 (Miss. 1949).

Chancellor is in error in terminating tenancy by month for indefinite period of time, against will of tenant, and in awarding possession of premises to landlord, on record showing that no written notice was given to tenant to terminate his tenancy, as provided by this section [Code 1942, § 946]. Williams v. Barlow, 205 Miss. 449, 38 So. 2d 914, 1949 Miss. LEXIS 442 (Miss. 1949).

Under this section [Code 1942, § 946], letting of real property by month for indefinite period of time can only be terminated against will of tenant at end of monthly term then pending by giving one week's notice in writing. Williams v. Barlow, 205 Miss. 449, 38 So. 2d 914, 1949 Miss. LEXIS 442 (Miss. 1949).

Where relation of landlord and tenant exists and there is holding from year to year with no definite period for termination of lease, notice to terminate tenancy is essential to maintenance of suit against tenant for possession. Hamilton v. Federal Land Bank, 175 Miss. 462, 167 So. 642, 1936 Miss. LEXIS 68 (Miss. 1936).

Indefinite rental of building held tenancy from month to month, and tenant entitled to notice of termination. Lay v. Great Southern Lumber Co., 118 Miss. 636, 79 So. 822, 1918 Miss. LEXIS 113 (Miss. 1918).

A letting of real property by the month to continue for an indefinite period according to the wishes of the contracting parties, can only be terminated at the end of the monthly term then pending on giving one week's notice in writing. Wilson v. Wood, 84 Miss. 728, 36 So. 609, 1904 Miss. LEXIS 74 (Miss. 1904).

Where land is leased by the month to continue for an indefinite period the tenancy can only be terminated at the end of a monthly term upon a week's notice in writing. Wilson v. Wood, 84 Miss. 728, 36 So. 609, 1904 Miss. LEXIS 74 (Miss. 1904).

RESEARCH REFERENCES

ALR.

Retaliatory eviction of tenant for reporting landlord's violation of law. 40 A.L.R.3d 753.

Lease provisions allowing termination or forfeiture for violation of law. 92 A.L.R.3d 967.

Circumstances excusing lessee's failure to give timely notice of exercise of option to renew or extend lease. 27 A.L.R.4th 266.

Sufficiency as to method of giving oral or written notice exercising option to renew or extend lease. 29 A.L.R.4th 903.

What constitutes timely notice of exercise of option to renew or extend lease. 29 A.L.R.4th 956.

Waiver of statutory demand-for-rent due or of notice-to-quit prerequisite of summary eviction of lessee for nonpayment of rent-modern cases. 31 A.L.R.4th 1254.

Sufficiency as to parties giving or receiving notice of exercise of option to renew or extend lease. 34 A.L.R.4th 857.

Specificity of description of premises as affecting enforceability of lease. 73 A.L.R.4th 236.

What constitutes abandonment of residential or commercial lease-modern cases. 84 A.L.R.4th 183.

Am. Jur.

11B Am. Jur. Legal Forms 2d, Leases of Real Property §§ 161:1270 et seq. (notice of termination and cancellation).

15 Am. Jur. Proof of Facts 2d 209, Landlord's Reasonable Efforts to Minimize Damages After Tenant's Breach of Lease.

25 Am. Jur. Proof of Facts 2d 51, Abandonment of Lease of Real Property.

50 Am. Jur. Proof of Facts 2d 519, Lessee's Excusable Failure to give Timely Notice Exercising Option to Renew Lease.

CJS.

51C C.J.S., Landlord and Tenant §§ 81(1) et seq., 142(1) et seq., 150(1) et seq., 173, 183.

§ 89-7-25. Tenant holding after notice liable for double rent.

When a tenant, being lawfully notified by his landlord, shall fail or refuse to quit the demised premises and deliver up the same as required by the notice, or when a tenant shall give notice of his intention to quit the premises at a time specified, and shall not deliver up the premises at the time appointed, he shall, in either case, thenceforward pay to the landlord double the rent which he should otherwise have paid, to be levied, sued for, and recovered as the single rent before the giving of notice could be; and double rent shall continue to be paid during all the time the tenant shall so continue in possession.

HISTORY: Codes, 1857, ch. 41, art. 23; 1871, § 1642; 1880, § 1331; 1892, § 2545; 1906, § 2883; Hemingway's 1917, § 2381; 1930, § 2225; 1942, § 947.

Cross References — Provision that the state shall have all the liens, rights, and remedies accorded to landlords in this chapter, see § 29-1-107.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Penal nature of statute.
3. Notice.
4. Recovery of double rent.
5. Attorney's fees.
6. Waiver and estoppel.

1. In general.

The statute is the sole remedy for landlords against holdover tenants; the common law rule with regard to holdover tenants was abrogated by the statute. Dungan v. Presley, 765 So. 2d 592, 2000 Miss. App. LEXIS 379 (Miss. Ct. App. 2000).

Where the landlord did not covenant to put the new tenant in possession of the leased premises, the landlord's right to bring a dispossessory action against the old tenant was transferred to the new tenant, and the new tenant was bound by the terms of this section and could recover no more than the damages allowed the landlord under this section. Southwest Drug Co. v. Howard Bros. Pharmacy, Inc., 320 So. 2d 776, 1975 Miss. LEXIS 1499 (Miss. 1975).

Judgment may be entered for both single and double rent in an unlawful entry and detainer proceeding. Firestone Tire & Rubber Co. v. Fried, 202 Miss. 370, 31 So. 2d 116, 1947 Miss. LEXIS 287 (Miss. 1947).

Single rent only was recovered by a landlord during the time reasonably necessary for the tenant to remove its improvements after receiving notice the day before the lease expired that the landlord was exercising his retake privilege. Hines Motor Co. v. Hederman, 201 Miss. 859, 30 So. 2d 70, 1947 Miss. LEXIS 457 (Miss. 1947).

Under this section [Code 1942, § 947], rent due by a tenant unlawfully holding over after notice to vacate the premises is double that which he had agreed to pay. Ellison v. Landry, 199 Miss. 161, 24 So. 2d 319, 1946 Miss. LEXIS 182 (Miss. 1946).

Tenant, who became trespasser by holding over beyond expiration of term, is liable for double rent thereafter, but only for that period dating from one year prior to suit. Sherrill v. Stewart, 199 Miss. 216, 23 So. 2d 915, 1945 Miss. LEXIS 282 (Miss. 1945).

When a person is rightfully in possession of a leased premises and the landlord seeks wrongfully to evict him, the case does not become moot upon the mere fact that the tenant's term has expired before the time of trial, because, in such case, the general judgment in favor of the landlord would be to adjudge that the tenant was wrongfully in possession at the time the action was filed and before his rightful term expired, and might subject him to double rent under this section [Code 1942, § 947]. Henley v. Kilbas, 188 Miss. 604, 195 So. 582, 1940 Miss. LEXIS 61 (Miss. 1940).

Liability of tenant holding over after notice to quit, for double rent, is absolute. Weatherall v. Brown, 113 Miss. 887, 74 So. 765, 1917 Miss. LEXIS 161 (Miss. 1917).

After termination of lease tenant has reasonable time in which to remove effects, and on failure to do so landlord may remove them but does not acquire title by tenant's failure to remove. Opperman v. Littlejohn, 98 Miss. 636, 54 So. 77, 1910 Miss. LEXIS 102 (Miss. 1910).

2. Penal nature of statute.

In unlawful entry and detainer action against tenant holding over, imposition of damages at double rent cannot be awarded on testimony which is too vague to establish a rental basis, especially in view of penal nature of such award. Burr v. Johnson, 204 Miss. 479, 37 So. 2d 747, 1948 Miss. LEXIS 382 (Miss. 1948).

One who is no longer within the orbit of federal statute because no longer a tenant, the office of price administration having authorized action for eviction or removal in accordance with requirements of local law, cannot avoid penalty provided by this section [Code 1942, § 947]. Stovall

v. Gardner, 203 Miss. 527, 36 So. 2d 163, 1948 Miss. LEXIS 302 (Miss. 1948).

"Double rent" imposed under this section [Code 1942, § 947] is a penalty and not rent in the accepted sense of being a stipulated consideration for the use or occupancy of property. Stovall v. Gardner, 203 Miss. 527, 36 So. 2d 163, 1948 Miss. LEXIS 302 (Miss. 1948).

This section [Code 1942, § 947] is penal and should be strictly construed against the claim for double rent. Sherrill v. Stewart, 197 Miss. 880, 21 So. 2d 11, 1945 Miss. LEXIS 319 (Miss. 1945).

Claim for double rent is one for a penalty and is subject to the one-year limitation period under Code 1942, § 731. Sherrill v. Stewart, 197 Miss. 880, 21 So. 2d 11, 1945 Miss. LEXIS 319 (Miss. 1945).

The statutory provision making a tenant liable for double rent in case he holds over after notice is penal and should be strictly construed against the claim for double rent, but that does not mean that the very letter of the statute must be followed. Gulley v. Mayo, 191 Miss. 143, 1 So. 2d 800, 1941 Miss. LEXIS 118 (Miss. 1941).

3. Notice.

Liability of tenant holding over after notice to quit for double rent is absolute. Stovall v. Gardner, 203 Miss. 527, 36 So. 2d 163, 1948 Miss. LEXIS 302 (Miss. 1948).

There can be no double rent in the absence of a notice to quit; summons to the action is not equivalent to such notice. McKay v. Shaffer, 202 Miss. 558, 32 So. 2d 746, 1947 Miss. LEXIS 317 (Miss. 1947).

Where a tenancy was from month to month, beginning on the 10th of the month, the landlord, who gave the tenant written notice on April 5th to vacate on the 30th of that month, should not be denied double rent for the period the tenant held over after the 10th of May, on the ground that the notice fixed a time for vacation ten days earlier than he was entitled to fix, since the tenant could not have been misled by the notice, but knew that the landlord intended him to vacate not on the 30th of the month, but on the 10th of the next month, and that he had simply made a mistake in fixing the date. Gulley v. Mayo, 191 Miss. 143, 1 So. 2d 800, 1941 Miss. LEXIS 118 (Miss. 1941).

Subtenants, who held over under oral lease with tenant after termination of tenant's lease, were not liable to landlord for double rent, where landlord did not give such tenants notice to quit. Graham v. Cauthen, 175 Miss. 751, 168 So. 58, 1936 Miss. LEXIS 75 (Miss. 1936).

Landlord's notice to quit enures to purchaser's benefit, and tenant becomes liable for double rent on remaining beyond his rights. Pinnix v. Jones, 127 Miss. 764, 90 So. 481, 1921 Miss. LEXIS 279 (Miss. 1921).

Correspondence held to constitute notice to vacate, and plaintiff entitled to recover double rent. Stollenwerck v. Eure, 119 Miss. 854, 81 So. 594, 1919 Miss. LEXIS 51 (Miss. 1919).

4. Recovery of double rent.

Father was not entitled to judgment against his children's mother and the children for a rent arrearage, when he purportedly revoked his "gift" to them of the house they lived in because, (1) he could not show any arrearage of rent, (2) he could not recover double rent, and (3) he was not a traditional landlord but a father seeking to obtain damages for his son's failure to vacate the father's property. Turnage v. Brooks, 301 So. 3d 760, 2020 Miss. App. LEXIS 403 (Miss. Ct. App. 2020).

Hold-over tenant was liable for double rent for entire premises that he had leased with cotenant, even though he claimed that he occupied only half of the premises. Murphree v. Aberdeen-Monroe County Hosp., 671 So. 2d 1300, 1996 Miss. LEXIS 61 (Miss. 1996).

On affirmance of judgment for landlord for possession of property, double rent and costs, judgment will be entered in supreme court against tenants and their sureties on supersedeas bond for double rent, plus interest thereon at rate of 6% per annum from date of judgment below to date of judgment in supreme court, and all costs, and for five per centum upon value of property interest in dispute, or amount of judgment, whichever shall be found to be smaller, which fact will be found by lower court on remand to it for that purpose, facts as to value not appearing in record. Conn v. Brashears, 38 So. 2d 907 (Miss. 1949).

This section [Code 1942, § 947] allowing double rent and Code 1942, § 1054, providing that judge shall find upon evidence the arrears of rent or reasonable compensation are applicable to suits in unlawful entry and detainer. Burr v. Johnson, 204 Miss. 479, 37 So. 2d 747, 1948 Miss. LEXIS 382 (Miss. 1948).

Under this section [Code 1942, § 947], double rent may be recovered in an action of unlawful entry and detainer. Ellison v. Landry, 199 Miss. 161, 24 So. 2d 319, 1946 Miss. LEXIS 182 (Miss. 1946).

The statutory remedy of recovery of double rent for tenant's holding over is exclusive, and hence recovery thereunder in dispossessory proceedings was res judicata of landlord's action for damages, notwithstanding another statute permitting recovery of both penalty and actual damages in certain cases. Tepper Bros. v. Buttross, 178 Miss. 659, 174 So. 556, 1937 Miss. LEXIS 261 (Miss. 1937).

Double rent is recoverable in unlawful entry and detainer proceeding. Weatherall v. Brown, 113 Miss. 887, 74 So. 765, 1917 Miss. LEXIS 161 (Miss. 1917).

5. Attorney's fees.

Attorney's fees are not recoverable under this statute, damages being expressly limited thereby to double rent, contractual provision to the contrary notwithstanding. Hines Motor Co. v. Hederman, 201 Miss. 859, 30 So. 2d 70, 1947 Miss. LEXIS 457 (Miss. 1947).

6. Waiver and estoppel.

A landlord's sole action for damages as a result of a tenant's holdover is provided in § 89-7-25; accordingly, where the landlord notified the tenant of the approaching expiration of his annual lease and demanded that the premises be surrendered at the completion of the term, but never elected to pursue his statutory remedy by having the tenant evicted, the landlord's acceptance of one month's rent following the expiration of the lease created a month to month tenancy, and the landlord was entitled to nothing further when the tenant vacated the premises at the end of that month. Mississippi State Dep't of Public Welfare v. Howie, 449 So. 2d 772, 1984 Miss. LEXIS 1663 (Miss. 1984).

Double rent was not recoverable prior to date on which tenant herself asserted that the term had expired, where landlord had waived the claim for double rent. Sherrill v. Stewart, 199 Miss. 216, 23 So. 2d 915, 1945 Miss. LEXIS 282 (Miss. 1945).

Tenant's plea of estoppel in landlord's action for double rent, upon ground that landlord's position in present suit was inconsistent with prior suit between the same parties and relating to the same subject matter instituted by the landlord for dispossession wherein landlord waived claim for double rent, was not frivolous, so that the sustaining of plaintiff's motion to strike the plea constituted reversible error. Sherrill v. Stewart, 197 Miss. 880, 21 So. 2d 11, 1945 Miss. LEXIS 319 (Miss. 1945).

RESEARCH REFERENCES

ALR.

What constitutes tenant's holding over of leased premises. 13 A.L.R.5th 169.

Validity and construction of lease provision requiring lessee to pay liquidated sum for failure to vacate premises or surrender possession at expiration of lease. 23 A.L.R.2d 1318.

What constitutes willfulness or malice justifying landlord's collection of statutory multiple damages for tenant's wrongful retention of possession. 7 A.L.R.4th 589.

What are reports prepared or used by "agency responsible for the regulation or supervision of financial institutions," within Freedom of Information Act (5 USCS § 552(b)(8)). 48 A.L.R. Fed. 814.

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant § 960.

50 Am. Jur. Proof of Facts 2d 519, Lessee's Excusable Failure to give Timely Notice Exercising Option to Renew Lease.

Young, Trial Handbook for Mississippi Lawyers § 32:19.

CJS.

51C C.J.S., Landlord and Tenant §§ 73 et seq., 136(1) et seq., 148, 165, 177.

Law Reviews.

Walker, Common Law Protection of Economic Expectancies: "Business Torts" in Mississippi. 50 Miss. L. J. 335, March 1979.

1984 Mississippi Supreme Court Review: Property. 55 Miss. L. J. 135, March, 1985.

§ 89-7-27. Proceedings against tenant holding over.

A tenant or lessee at will or at sufferance, or for part of a year, or for one or more years, of any houses, lands, or tenements, and the assigns, undertenants, or legal representatives of such tenant or lessee, shall be removed from the premises by the judge of the county court, any justice of the peace of the county, or by the mayor or police justice of any city, town, or village where the premises, or some part thereof, are situated, in the following cases, to wit:

First. Where such tenant shall hold over and continue in possession of the demised premises, or any part thereof, after the expiration of his term, without the permission of the landlord.

Second. After any default in the payment of the rent pursuant to the agreement under which such premises are held, and when complete satisfaction of the rent and any late fees due cannot be obtained by distress of goods, and three (3) days' notice, in writing, requiring the payment of such rent or the possession of the premises, shall have been served by the person entitled to the rent on the person who owes the rent.

Third. If a written agreement between the landlord and tenant exists, any event calling for eviction in the agreement may trigger the eviction process under this section. Notice of default by email or text message is proper if the party has agreed in writing to be notified by that means.

HISTORY: Codes, 1857, ch. 41, art. 27; 1871, § 1646; 1880, § 1333; 1892, § 2547; 1906, § 2885; Hemingway's 1917, § 2383; 1930, § 2226; 1942, § 948; Laws, 2018, ch. 446, § 1, eff from and after July 1, 2018.

Editor's Notes — Pursuant to Miss. Const. Art. 6, Section 171, all references in the Mississippi Code to "justice of the peace" shall mean justice court judge.

Cross References — Jurisdiction of county courts, see § 9-9-1.

Civil jurisdiction of justices of the peace, see § 9-11-9.

Unlawful entry and detainer by tenant, see §§ 11-25-1 et seq.

Duties of mayor generally, see § 21-3-15.

Powers and duties of police justice, see §§ 21-23-1 et seq.

Provision that the state shall have all the liens, rights, and remedies accorded to landlords in this chapter, see § 29-1-107.

Right of landlord to remove tenant in manner prescribed by this Chapter for nonpayment of rent, not circumscribed by termination procedure specified in section 89-8-13, see § 89-8-13.

Annulment of lease for unlawful use of premises, see § 95-3-23.

JUDICIAL DECISIONS

ANALYSIS

1. Jurisdiction.
2. Notice.
3. Procedure, generally.
4. Pleading.
5. Evidence.
6. Damages.
7. Appeals.
8. Estoppel and waiver.
9. Miscellaneous.

1. Jurisdiction.

Neither justice of peace, nor circuit court on appeal, in proceeding under this section [Code 1942, § 948], have any jurisdiction to make final and conclusive adjudication of title to property involved. McCoy v. McRae, 204 Miss. 309, 37 So. 2d 353, 1948 Miss. LEXIS 368 (Miss. 1948).

Circuit court has jurisdiction of both subject matter and parties on appeal with supersedeas from fault judgment by justice of peace, in summary proceeding under this section [Code 1942, § 948], to obtain possession of real property, rendered on invalid service of process, although justice of peace had jurisdiction only of subject matter when default judgment was rendered. McCoy v. McRae, 204 Miss. 309, 37 So. 2d 353, 1948 Miss. LEXIS 368 (Miss. 1948).

Supreme court has no jurisdiction to make conclusive adjudication of title to property on appeal of proceeding under this section [Code 1942, § 948] begun in justice of peace court, where neither justice of peace nor circuit court on appeal had jurisdiction to make final and conclusive adjudication of title to property as between parties to this litigation. McCoy v. McRae, 204 Miss. 309, 37 So. 2d 353, 1948 Miss. LEXIS 368 (Miss. 1948).

County judge had jurisdiction of landlord's action to oust tenant at end of term, under statute, as against contention that county court has no authority to try causes in vacation. McMillan v. Best, 171 Miss. 811, 158 So. 488, 1935 Miss. LEXIS 14 (Miss. 1935).

2. Notice.

A notice to tenant to vacate the premises was not in compliance with the statute since it failed to require in the alternative the payment of rent or the possession of the premises. Williams v. Shivers, 222 Miss. 626, 76 So. 2d 838, 1955 Miss. LEXIS 646 (Miss. 1955).

Where tenancy, which had been held under definite, different contracts for 1933 and 1934, terminated on December 31, 1934, and proceeding was brought in January, 1935, after notice on January 9, 1935, to vacate, landlord's failure to give such notice before expiration of lease did not amount to waiver of right to possession; statute requiring two months' notice being inapplicable. Graham v. Cauthen, 175 Miss. 751, 168 So. 58, 1936 Miss. LEXIS 75 (Miss. 1936).

3. Procedure, generally.

Judgment of county judge in ouster proceeding after termination of lease was not void on ground that county clerk filed all papers in proceeding and issued process, where defendants waived service of process and appeared before county judge by their answer and case was tried by agreement of all parties thereto. Graham v. Cauthen, 175 Miss. 751, 168 So. 58, 1936 Miss. LEXIS 75 (Miss. 1936).

Error to grant peremptory instruction when evidence sharply conflicting as to existence of relation. Lockett v. Lockett, 95 So. 741 (Miss. 1923).

Consolidation of proceedings by vendor and purchaser to eject tenant held error, but not to require reversal, though costs would be charged against landlord. Pinnix v. Jones, 127 Miss. 764, 90 So. 481, 1921 Miss. LEXIS 279 (Miss. 1921).

4. Pleading.

In an action by a landlord to recover possession of a house and lot against her tenant, the court found it unnecessary to review the ruling upon pleas in demurrer by the parties where the case was finally submitted to the jury on evidence which would have been permissible if the pleading had been confined to the two affidavits contemplated by this section [Code 1942, § 948], and Code 1942, § 953. Tanner v. Walsh, 184 Miss. 147, 183 So. 278, 1938 Miss. LEXIS 304 (Miss. 1938).

5. Evidence.

In proceeding under this section [Code 1942, § 948], title to property cannot be conclusively adjudicated but landlord must make at least prima facie showing that he is entitled to possession. McCoy v. McRae, 204 Miss. 309, 37 So. 2d 353, 1948 Miss. LEXIS 368 (Miss. 1948).

6. Damages.

Under Code 1942, § 947, double rent may be recovered in an action of unlawful entry and detainer inasmuch as Code 1942, §§ 1043 and 1054 provide for the recovery in such an action of "any amount for arrears of rent," and recovery therefor is not limited to the summary action provided by this section [Code 1942, § 948]. Ellison v. Landry, 199 Miss. 161, 24 So. 2d 319, 1946 Miss. LEXIS 182 (Miss. 1946).

Plaintiff's cause of action on defendant's appeal bond stipulating that should judgment, awarding plaintiff possession of land under this section [Code 1942, § 948] as against defendant's contention that he was in possession under contract for purchase, be affirmed, defendant would pay all costs and the value of use and occupation of the land after time of taking the appeal, as well as damages for waste or injury, is enforceable, upon affirmance of the judgment, only by an original action on the bond, and not by merely remanding the cause to the court below for the ascertainment of the amount of damages covered by the bond. Hodges v. Jones, 197 Miss. 107, 19 So. 2d 518, 1944 Miss. LEXIS 278 (Miss. 1944).

Interest of plaintiff in the land, where supreme court affirmed judgment granting plaintiff possession as against defendant's contention that he was in possession under contract for its purchase, was not limited to the rent due but covered all its value, so as to entitle plaintiff to 5 per cent damages on such value under Code 1942, § 1971. Hodges v. Jones, 197 Miss. 107, 19 So. 2d 518, 1944 Miss. LEXIS 278 (Miss. 1944).

Where defendant's appeal bond stipulated that if judgment awarding owner possession of land was affirmed he would pay all costs and the value of the use and occupation of the land after the time of taking the appeal, but the question as to the amount of damages covered by the bond had not been argued by either counsel, no judgment would be rendered for damages upon affirmance, although appellee could file a motion for such a judgment, to which appellant could reply and appellee could make rejoinder. Hodges v. Jones, 197 Miss. 107, 19 So. 2d 518, 1944 Miss. LEXIS 278 (Miss. 1944).

Proper elements of damages for wrongful suing out injunction to prevent tenants from removing building are attorney's fees, costs, depreciation, expenses of trial, and reasonable rent. Waldauer v. Parks, 141 Miss. 617, 106 So. 881, 1926 Miss. LEXIS 467 (Miss. 1926).

7. Appeals.

Statutes relating to bond and judgment thereon in proceedings to stay execution of writ of possession in ejectment (Code 1942, §§ 1165 and 1166) have no application to an appeal by tenant from judgment rendered against him in proceeding under this section [Code 1972, § 948] awarding appellee recovery of land as against contention that tenant was in possession under contract for purchase, since this is not an appeal from a judgment in an action of ejectment with a stay of execution. Hodges v. Jones, 197 Miss. 107, 19 So. 2d 518, 1944 Miss. LEXIS 278 (Miss. 1944).

Appeal from judgment of justice of peace dispossessing tenant must be taken within five days after judgment. Simpson v. Boykin, 118 Miss. 701, 79 So. 852, 1918 Miss. LEXIS 123 (Miss. 1918), overruled, Jackson v. Schwartz, 240 So. 2d 60, 1970 Miss. LEXIS 1267 (Miss. 1970).

On appeal to the circuit court the tenant may for the first time make and file an affidavit denying the facts averred by the landlord, upon which the summons was issued, and will be entitled to a trial on the merits of the issue so made. Harvey v. Clark, 81 Miss. 166, 32 So. 906, 1902 Miss. LEXIS 113 (Miss. 1902).

8. Estoppel and waiver.

Where a notice to vacate the premises was defective, but the tenant promised that he would move there was a waiver of written notice. Williams v. Shivers, 222 Miss. 626, 76 So. 2d 838, 1955 Miss. LEXIS 646 (Miss. 1955).

Rule that person who enters into possession of property under agreement with another, either express or implied, to occupy it as tenant is ordinarily estopped to deny title of landlord is applicable only where relationship of landlord and tenant is admitted or established and does not preclude alleged tenant from showing that relationship never existed. McCoy v. McRae, 204 Miss. 309, 37 So. 2d 353, 1948 Miss. LEXIS 368 (Miss. 1948).

Where tenancy, which had been held under definite, different contracts for 1933 and 1934, terminated on December 31, 1934, and proceeding was brought in January, 1935, after notice on January 9, 1935, to vacate, landlord's failure to give such notice before expiration of lease did not amount to waiver of right to possession; statute requiring two months' notice being inapplicable. Graham v. Cauthen, 175 Miss. 751, 168 So. 58, 1936 Miss. LEXIS 75 (Miss. 1936).

9. Miscellaneous.

Question of usury in note secured by deed of trust later foreclosed and effect of usury upon foreclosure sale will not be adjudicated in proceeding under this section [Code 1942, § 948] by purchaser of property at foreclosure sale to obtain possession of the property. McCoy v. McRae, 204 Miss. 309, 37 So. 2d 353, 1948 Miss. LEXIS 368 (Miss. 1948).

Defendant in possession of land under a parol agreement with owner's husband, approved by owner, to convey it to defendant upon payment of stipulated price, a portion of which had been paid, was merely a tenant at will or sufferance, thereby entitling owner, who had given notice to vacate and quit, to possession, since defendant's possession was not under a deed but merely under a parol agreement. Hodges v. Jones, 197 Miss. 107, 19 So. 2d 518, 1944 Miss. LEXIS 278 (Miss. 1944).

Where tenancy of farm land for 1934 terminated on December 31, 1934, and proceeding was brought in January, 1935, after notice on January 9, 1935, to vacate, landlord was not entitled to apportionment of rent for hold-over period which terminated on March 9, 1935, based on 1934 rental. Graham v. Cauthen, 175 Miss. 751, 168 So. 58, 1936 Miss. LEXIS 75 (Miss. 1936).

Landlord who had leased premises to third person had no right of action against old tenant to secure possession of land at end of term, where she was under no contract to give possession to lessee, or to oust tenant holding over. McMillan v. Best, 171 Miss. 811, 158 So. 488, 1935 Miss. LEXIS 14 (Miss. 1935).

Judgment for landlord in statutory proceeding before justice to obtain possession is not conclusive upon title, though determination of title was involved. Vansant v. Dodds, 164 Miss. 787, 144 So. 688, 1932 Miss. LEXIS 254 (Miss. 1932).

Validity of constable's deed to execution creditor cannot be conclusively adjudicated in creditor's action against debtor under statute authorizing removal of holdover tenant, or tenant defaulting in rent; such statutory action being purely possessory. Vansant v. Dodds, 164 Miss. 787, 144 So. 688, 1932 Miss. LEXIS 254 (Miss. 1932).

Landlord cannot sue to eject tenant after sale of premises. Pinnix v. Jones, 127 Miss. 764, 90 So. 481, 1921 Miss. LEXIS 279 (Miss. 1921).

Lessee holding over pending negotiations for renewal of lease, not entitled to renewal nor to hold under new term. Thomas Hinds Lodge v. Presbyterian Church of Fayette, 103 Miss. 130, 60 So. 66, 1912 Miss. LEXIS 146 (Miss. 1912).

Landlord not entitled to recover rent from tenant remaining in possession after notice upon expiration of term, under circumstances indicating no rent charged. Thomas Hinds Lodge v. Presbyterian Church of Fayette, 103 Miss. 130, 60 So. 66, 1912 Miss. LEXIS 146 (Miss. 1912).

Tenant has reasonable time to remove crop matured at termination of lease; matured crop at end of lease not a growing crop. Opperman v. Littlejohn, 98 Miss. 636, 54 So. 77, 1910 Miss. LEXIS 102 (Miss. 1910).

Where the tenant continues to occupy the premises, and enters upon another term without objection from the landlord, a tenancy for another term is thus created which cannot be terminated in the middle of the term. Usher v. Moss, 50 Miss. 208, 1874 Miss. LEXIS 46 (Miss. 1874).

OPINIONS OF THE ATTORNEY GENERAL

A landlord should sue for eviction in the county where the leased premises are located. Shirley, Aug. 19, 2005, A.G. Op. 05-0406.

RESEARCH REFERENCES

ALR.

What constitutes tenant's holding over of leased premises. 13 A.L.R.5th 169.

Waiver of statutory demand-for-rent due or of notice-to-quit prerequisite of summary eviction of lessee for nonpayment of rent-modern cases. 31 A.L.R.4th 1254.

Lessor's retention of past-due rental payments as precluding termination of lease and dispossession of lessee for nonpayment of rent. 39 A.L.R.4th 1204.

Reviewability before trial of order denying qualified immunity to defendant sued in state court under 42 USCS § 1983. 49 A.L.R.5th 717.

When is eviction of tenant by private landlord conducted "under color of state law" for purposes of 42 USCS § 1983. 73 A.L.R. Fed. 78.

Am. Jur.

16 Am. Jur. Pl & Pr Forms (Rev) Landlord and Tenant, Forms 151 et seq. (landlord's possessory remedies).

CJS.

52A C.J.S., Landlord and Tenant §§ 1335, 1336 et seq., 1361 et seq.

Law Reviews.

1984 Mississippi Supreme Court Review: Property. 55 Miss. L. J. 135, March, 1985.

§ 89-7-29. Affidavit to remove.

The landlord or lessor, his legal representatives, agents, or assigns, in order to have the benefit of such proceedings, shall present to the court a sworn affidavit that contains the facts which, according to Section 89-7-27, require the removal of the tenant, describing in the affidavit the premises claimed and the amount of rent and any late fees due and when payable, and that the necessary notice has been given to terminate such tenancy. These facts shall be based on the rental agreement signed or agreed to by the landlord or lessor, his legal representatives, agents, or assigns, and the tenant. Upon receipt of the sworn affidavit, the court shall initiate the removal of the tenant for the nonpayment of rent or other event of default contained in any written agreement between the parties, as specified in the affidavit.

HISTORY: Codes, 1857, ch. 41, art. 28; 1871, § 1648; 1880, § 1334; 1892, § 2548; 1906, § 2886; Hemingway's 1917, § 2384; 1930, § 2227; 1942, § 949; Laws, 2018, ch. 446, § 2, eff from and after July 1, 2018.

Cross References — Right of landlord to remove tenant in manner prescribed by this Chapter for nonpayment of rent, not circumscribed by termination procedure specified in section 89-8-13, see § 89-8-13.

JUDICIAL DECISIONS

1. In general.

Proceedings to dispossess tenant for failure to pay rent must be strictly followed; error to dissolve injunction and dismiss bill where affidavit void. Downing v. Campbell, 131 Miss. 137, 95 So. 312, 1922 Miss. LEXIS 281 (Miss. 1922).

Circuit court, on appeal thereto in proceeding by landlord to get possession of premises, trial therein being de novo, could render judgment for rent up to trial in circuit court though affidavit in lower court did not allege rent due. Stollenwerck v. Eure, 119 Miss. 854, 81 So. 594, 1919 Miss. LEXIS 51 (Miss. 1919).

To summarily remove a tenant for nonpayment of rent the affidavit and proof must show that the rent was due and unpaid, that three days' notice in writing requiring payment had been given and that the rent cannot be made by distress of the tenant's goods. Wilson v. Wood, 84 Miss. 728, 36 So. 609, 1904 Miss. LEXIS 74 (Miss. 1904).

An affidavit in a proceeding to remove a tenant holding over under this section [Code 1942, § 949] is defective if it fails to state facts from which the court may determine that the relation of landlord and tenant existed and that the term has expired. Bowles v. Dean, 84 Miss. 376, 36 So. 391, 1904 Miss. LEXIS 46 (Miss. 1904).

A proceeding to remove a tenant holding over should not be dismissed because of a defective affidavit unless the landlord declines to amend. Bowles v. Dean, 84 Miss. 376, 36 So. 391, 1904 Miss. LEXIS 46 (Miss. 1904).

RESEARCH REFERENCES

ALR.

What constitutes tenant's holding over of leased premises. 13 A.L.R.5th 169.

Commercial leases: application of rule that lease may be canceled only for "material" breach. 54 A.L.R.4th 595.

§ 89-7-31. Issuance of summons; notice that landlord may dispose of tenant's personal property if judge awards exclusive possession of premises.

(1) On receiving the affidavit, the county judge, justice court judge, municipal judge, or other officer shall issue a summons, directed to the sheriff or any constable of the county, or the marshal of the municipality in which the premises, or some part thereof, are situated, describing the premises, and commanding him to require the person in possession of the same or claiming the possession thereof, immediately to remove from the premises, or to show cause before the justice court judge or other officer, on a day to be named in the summons, why possession of the premises should not be delivered to the applicant.

(2) In addition to other information required for the summons, the summons shall state: "At the hearing, a judge will determine if the landlord is granted exclusive possession of the premises. If the judge grants possession of the premises to the landlord and you do not remove your personal property, including any manufactured home, from the premises before the date and time ordered by the judge, then the landlord may dispose of your personal property without any further legal action."

HISTORY: Codes, 1857, ch. 41, art. 29; 1871, § 1649; 1880, § 1335; 1892, § 2549; 1906, § 2887; Hemingway's 1917, § 2385; 1930, § 2228; 1942, § 950; Laws, 2015, ch. 395, § 1, eff from and after July 1, 2015; Laws, 2019, ch. 386, § 1, eff from and after passage (approved March 22, 2019).

RESEARCH REFERENCES

Am. Jur.
16 Am. Jur. Pl & Pr Forms (Rev), Landlord and Tenant, Form 182 (writ of possession).

CJS.
52A C.J.S., Landlord and Tenant § 1375.

§ 89-7-33. Service of summons.

Such summons shall be served as a summons is served in other cases, if the tenant can be found; if not, then by putting up a copy in some conspicuous place on the premises where the tenant last or usually resided.

HISTORY: Codes, 1857, ch. 41, art. 30; 1871, § 1650; 1880, § 1336; 1892, § 2550; 1906, § 2888; Hemingway's 1917, § 2386; 1930, § 2229; 1942, § 951.

§ 89-7-35. Issuance of warrant for removal.

(1) If, at the time appointed, it appears that the summons has been duly served, and if a judgment of eviction is granted, the magistrate shall issue a warrant to the sheriff or any constable of the county, or to a marshal of the municipality in which the premises, or some part thereof, are situated, immediately upon request, except when prohibited or otherwise provided under Section 89-7-45, commanding him to remove all persons from the premises, and to put the applicant into full possession thereof.

(2) If the summons complied with the requirements of Section 89-7-31(2) and if the tenant has failed to remove any of tenant's personal property, including any manufactured home, from the premises, then, if the judge has not made some other finding regarding the disposition of any personal property in the vacated premises, the personal property shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to the tenant.

HISTORY: Codes, 1857, ch. 41, art. 31; 1871, § 1651; 1880, § 1337; 1892, § 2551; 1906, § 2889; Hemingway's 1917, § 2387; 1930, § 2230; 1942, § 952; Laws, 2015, ch. 395, § 2, eff from and after July 1, 2015; Laws, 2019, ch. 386, § 2, eff from and after passage (approved March 22, 2019).

OPINIONS OF THE ATTORNEY GENERAL

If a justice court makes a finding in favor of the landlord in a proceeding for an eviction or removal, the court must immediately issue a warrant of removal according to §§ 89-7-35 or 89-7-41; the constable is entitled to a $25.00 fee for the service of the warrant as allowed by § 25-7-27(1)(b), but there is no provision for the justice court to charge any additional fee, other than the constable's fee, for the warrant of removal. Carter, Apr. 5, 2002, A.G. Op. #02-0157.

If a court makes a finding in favor of the landlord in a proceeding for an eviction or removal, the court shall immediately issue a warrant of removal. Once the landlord pays the constable fee for the removal warrant, the constable may immediately serve the warrant on the tenant. There is no need to wait ten days after a judgment for eviction before a removal warrant is issued. Riley, Dec. 5, 2003, A.G. Op. 03-0657.

If a court makes a finding in favor of the landlord in a proceeding for an eviction or removal, the court shall immediately issue a warrant of removal according to Sections 89-7-35 or 89-7-41. Shirley, Aug. 17, 2005, A.G. Op. 05-0201.

§ 89-7-37. Defense may be made.

The person in possession of such premises, or any person claiming possession thereof, may, at or before the time appointed in the summons for showing cause, file an affidavit with the magistrate who issued the same, denying the facts upon which the summons was issued; and the matters thus controverted may be tried by the magistrate.

HISTORY: Codes, 1857, ch. 41, art. 32; 1871, § 1652; 1880, § 1338; 1892, § 2552; 1906, § 2890; Hemingway's 1917, § 2388; 1930, § 2231; 1942, § 953.

JUDICIAL DECISIONS

1. In general.

Upon appeal defendant may file his counteraffidavit in the circuit court. Bowles v. Dean, 84 Miss. 376, 36 So. 391, 1904 Miss. LEXIS 46 (Miss. 1904).

RESEARCH REFERENCES

ALR.

Specificity of description of premises as affecting enforceability of lease. 73 A.L.R.4th 236.

§ 89-7-39. Continuances, subpoenas.

The court may, at the request of either party, adjourn the hearing from time to time, a single adjournment not to exceed ten (10) days, except by consent, and may issue subpoenas and attachments to compel the attendance of witnesses. However, in hearings for eviction, no adjournment shall extend the entire hearing beyond forty-five (45) days from the date the eviction action was filed.

HISTORY: Codes, 1857, ch. 41, art. 35; 1871, § 1655; 1880, § 1339; 1892, § 2553; 1906, § 2891; Hemingway's 1917, § 2389; 1930, § 2232; 1942, § 954; Laws, 2018, ch. 446, § 3, eff from and after July 1, 2018.

§ 89-7-41. Form of judgment for landlord; disposition of tenant's abandoned personal property.

(1) If the decision is in favor of the landlord or other person claiming the possession of the premises, the magistrate shall issue a warrant to the sheriff, constable, or other officer immediately upon request, except when prohibited or otherwise provided under Section 89-7-45, commanding him immediately to put the landlord or other person into possession of the premises, and to levy the costs of the proceedings of the goods and chattels, lands and tenements, of the

tenant or person in possession of the premises who shall have controverted the right of the landlord or other person.

(2) If the summons complied with the requirements of Section 89-7-31(2) and if the tenant has failed to remove any of tenant's personal property, including any manufactured home, from the premises, then, if the judge has not made some other finding regarding the disposition of any personal property in the vacated premises, the personal property shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to the tenant.

HISTORY: Codes, 1857, ch. 41, art. 36; 1871, § 1656; 1880, § 1340; 1892, § 2554; 1906, § 2893; Hemingway's 1917, § 2390; 1930, § 2233; 1942, § 955; Laws, 2015, ch. 395, § 3, eff from and after July 1, 2015; Laws, 2019, ch. 386, § 3, eff from and after passage (approved March 22, 2019).

Cross References — Rent recoverable in action for unlawful entry and detainer, see § 11-25-21.

Judgment for plaintiff and writ of possession in action for unlawful entry and detainer, see §§ 11-25-23, 11-25-113.

OPINIONS OF THE ATTORNEY GENERAL

If a justice court makes a finding in favor of the landlord in a proceeding for an eviction or removal, the court must immediately issue a warrant of removal according to §§ 89-7-35 or 89-7-41; the constable is entitled to a $25.00 fee for the service of the warrant as allowed by § 25-7-27(1)(b), but there is no provision for the justice court to charge any additional fee, other than the constable's fee, for the warrant of removal. Carter, Apr. 5, 2002, A.G. Op. #02-0157.

If a court makes a finding in favor of the landlord in a proceeding for an eviction or removal, the court shall immediately issue a warrant of removal. Once the landlord pays the constable fee for the removal warrant, the constable may immediately serve the warrant on the tenant. There is no need to wait ten days after a judgment for eviction before a removal warrant is issued. Riley, Dec. 5, 2003, A.G. Op. 03-0657.

If a court makes a finding in favor of the landlord in a proceeding for an eviction or removal, the court shall immediately issue a warrant of removal according to Sections 89-7-35 or 89-7-41. Shirley, Aug. 17, 2005, A.G. Op. 05-0201.

RESEARCH REFERENCES

ALR.

Measure and elements of damages for lessee's breach of covenant as to repairs. 45 A.L.R.5th 251.

§ 89-7-43. Judgment for defendant.

If the decision be in favor of the tenant, he shall recover costs of the applicant, and the magistrate shall issue execution therefor.

HISTORY: Codes, 1857, ch. 41, art. 37; 1871, § 1657; 1880, § 1341; 1892, § 2555; 1906, § 2892; Hemingway's 1917, § 2391; 1930, § 2234; 1942, § 956.

Cross References — Judgment for defendant in proceedings for unlawful entry and detainer, see §§ 11-25-27, 11-25-117.

JUDICIAL DECISIONS

1. In general.

Damages, if any, to be awarded against a landlord who unsucessfully appeals from a judgment in unlawful entry and detainer are not to be measured on the value of the land where the tenant makes no claim that he owns the land or has any right to its ownership as land. McKeithen v. Bush, 201 Miss. 664, 29 So. 2d 310, 1947 Miss. LEXIS 436 (Miss. 1947).

§ 89-7-45. When warrant for removal may issue in cases of nonpayment of rent.

If a judgment of eviction is founded solely upon the nonpayment of rent and, at the time of the request for the warrant for removal the full and complete amount of rent due, including any late fees as provided in the rental agreement that have accrued as of the date of judgment, and the costs of the proceedings, have been paid to the person entitled to the rent, the magistrate shall not issue a warrant for removal. If the rent, late fees and costs have not been paid in full at the time of the request for the warrant for removal, the magistrate must immediately issue the warrant for removal unless the judge determines that, for good cause shown, a stay not to exceed three (3) days would best serve the interests of justice and equity. If it is shown that a stay is likely to result in material injury to the property of the person entitled to the rent, no stay shall be granted.

HISTORY: Codes, 1857, ch. 41, art. 38; 1871, § 1658; 1880, § 1342; 1892, § 2556; 1906, § 2894; Hemingway's 1917, § 2392; 1930, § 2235; 1942, § 957; Laws, 2018, ch. 446, § 4, eff from and after July 1, 2018; Laws, 2019, ch. 386, § 4, eff from and after passage (approved March 22, 2019).

JUDICIAL DECISIONS

1. In general.

The right to stay proceedings on payment of rent, etc., exists after trial, on appeal, in the circuit court. Flanneken v. Wright, 64 Miss. 217, 1 So. 157, 1886 Miss. LEXIS 47 (Miss. 1886).

§ 89-7-47. Record, appeals.

The magistrate before whom proceedings shall be had against a tenant holding over, shall keep a full record of his proceedings, and shall carefully preserve all papers in the cause, and the same costs shall be taxed and paid as are allowed for similar service in cases of unlawful entry and detainer, and the right of appeal shall exist as in such cases.

HISTORY: Codes, 1857, ch. 41, art. 39; 1871, § 1659; 1880, § 1343; 1892, § 2557; 1906, § 2895; Hemingway's 1917, § 2393; 1930, § 2236; 1942, § 958.

Cross References — Appeal from unlawful entry and detainer court, see § 11-51-83.

Appeals from judgment of justice of the peace in civil cases, see § 11-51-85.

JUDICIAL DECISIONS

1. In general.

Where a circuit court affirmed the decision of justice of peace for landlord in a suit to remove tenant for nonpayment of rent, the circuit court properly allowed the landlord rent up to the time of the judgment. Williams v. Shivers, 222 Miss. 626, 76 So. 2d 838, 1955 Miss. LEXIS 646 (Miss. 1955).

Circuit court on appeal in proceeding by landlord to get possession of premises, trial therein being de novo, may render judgment for rent up to trial in circuit court though affidavit in lower court did not allege rent due. Stollenwerck v. Eure, 119 Miss. 854, 81 So. 594, 1919 Miss. LEXIS 51 (Miss. 1919).

On appeal to the circuit court the tenant may for the first time make and file an affidavit denying the facts averred by the landlord, upon which the summons was issued, and will be entitled to a trial on the merits of the issue so made. Harvey v. Clark, 81 Miss. 166, 32 So. 906, 1902 Miss. LEXIS 113 (Miss. 1902).

On appeal to the circuit court in proceedings against the tenant, a successful plaintiff may recover rent to the time of trial. Paxton v. Oliver, 70 Miss. 570, 12 So. 799, 1893 Miss. LEXIS 24 (Miss. 1893).

The appeal lies as well in a proceeding against a tenant holding over after the expiration of his term as against a tenant who is in default for the nonpayment of rent. Flanneken v. Wright, 64 Miss. 217, 1 So. 157, 1886 Miss. LEXIS 47 (Miss. 1886).

§ 89-7-49. Proceedings when tenant deserts premises.

If a tenant of lands, being in arrear for rent, shall desert the demised premises and leave the same uncultivated or unoccupied, so that a sufficient distress cannot be had to satisfy the arrears of rent, any constable of the county may, at the request of the landlord, and upon due proof by affidavit that the premises have been deserted, leaving rent in arrear, and not sufficient distress thereon, go upon and view the premises, and upon being satisfied that the premises have been so deserted, he shall affix a notice, in writing, upon a conspicuous part of the premises, stating what day he will return to take a second view thereof, not less than five (5) days nor more than fifteen (15) days thereafter, and requiring the tenant then to appear and pay the rent and any late fees due. At the time specified in the notice the constable shall again view the premises, and if, upon second view, the tenant shall not pay the rent and any late fees due, or there shall not be sufficient distress upon the premises, then the justice court shall immediately or within forty-eight (48) hours put the landlord in possession of the premises, and the lease thereof to such tenant shall become void. The tenant may appeal to the circuit court from the proceedings of the justice court at any time within thirty (30) days after possession delivered, by serving notice in writing thereof upon the landlord, and by giving bond, with sufficient sureties, to be approved by the justice court, for the payment to the landlord of the costs of appeal, which may be adjudged against the tenant; and thereupon the justice court shall return the proceedings before him to the next term of the circuit court, and the court shall, at the return term, examine the proceedings in a summary way, and may order restitution to be made to the tenant, with costs of appeal, to be paid by the landlord; or in case of affirming the proceedings, shall award costs against the tenant and sureties in his bond.

HISTORY: Codes, 1857, ch. 41, art. 24; 1871, § 1643; 1880, § 1332; 1892, § 2546; 1906, § 2884; Hemingway's 1917, § 2382; 1930, § 2237; 1942, § 959; Laws, 1990, ch. 404, § 1, eff from and after July 1, 1990; Laws, 2018, ch. 446, § 5, eff from and after July 1, 2018.

Cross References — Provision that the state shall have all the liens, rights, and remedies accorded to landlords in this chapter, see § 29-1-107.

JUDICIAL DECISIONS

1. In general.

If clause in lease prohibiting removal of property while rent was unpaid created equitable lien, it was not enforceable by statutory remedy of distress for rent. Lake v. Morson, 164 Miss. 401, 145 So. 337, 1933 Miss. LEXIS 237 (Miss. 1933).

When tenant on shares abandons his contract, landlord may sue for damages. Weir v. Cooper, 122 Miss. 225, 84 So. 184, 1920 Miss. LEXIS 430 (Miss. 1920).

No suit lies for rent before it is due; on abandonment of performance of share contract landlord may at once sue for breach. Weir v. Cooper, 122 Miss. 225, 84 So. 184, 1920 Miss. LEXIS 430 (Miss. 1920).

RESEARCH REFERENCES

ALR.

Landlord and tenant: respective rights in excess rent when landlord relets at higher rent during lessee's term. 50 A.L.R.4th 403.

Specificity of description of premises as affecting enforceability of lease. 73 A.L.R.4th 236.

What constitutes abandonment of residential or commercial lease-modern cases. 84 A.L.R.4th 183.

Landlord's duty, on tenant's failure to occupy, or abandonment of, premises, to mitigate damages by accepting or procuring another tenant. 75 A.L.R.5th 1.

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant §§ 870-872, 937.

16 Am. Jur. Pl & Pr Forms (Rev), Landlord and Tenant, Forms 381 et seq. (surrender, termination, and abandonment).

15 Am. Jur. Proof of Facts 2d 209, Landlord's Reasonable Efforts to Minimize Damages After Tenant's Breach of Lease.

25 Am. Jur. Proof of Facts 2d 51, Abandonment of Lease of Real Property.

26 Am. Jur. Proof of Facts 2d 525, Landlord's Acceptance of Abandonment or Surrender of Leased Premises.

CJS.

51C C.J.S., Landlord and Tenant §§ 120 et seq., 143, 174.

52A C.J.S., Landlord and Tenant, § 1323.

§ 89-7-51. Lien of landlord.

(1) Every lessor of land shall have a lien on the agricultural products of the leased premises, however and by whomsoever produced, to secure the payment of the rent and of money advanced to the tenant, and the fair market value of all advances made by him to his tenant for supplies for the tenant and others for whom he may contract, and for his business carried on upon the leased premises. This lien shall be paramount to all other liens, claims, or demands upon such products when perfected in accordance with Uniform Commercial Code Article 9 – Secured Transactions (Section 75-9-101 et seq.). The claim of the lessor for supplies furnished may be enforced in the same

manner and under the same circumstances as his claim for rent may be; and all the provisions of law as to attachment for rent and proceedings under it shall be applicable to a claim for supplies furnished, and such attachment may be levied on any goods and chattels liable for rent, as well as on the agricultural products.

(2) All articles of personal property, except a stock of merchandise sold in the normal course of business, owned by the lessee of real property and situated on the leased premises shall be subject to a lien in favor of the lessor to secure the payment of rent for such premises as has been contracted to be paid, whether or not then due. This lien shall be subject to all prior liens or other security interests perfected according to law. No such articles of personal property may be removed from the leased premises until such rent is paid except with the written consent of the lessor. All of the provisions of law as to attachment for rent and proceedings thereunder shall be applicable with reference to the lessor's lien under this subsection.

HISTORY: Codes, 1880, § 1301; 1892, § 2495; 1906, § 2832; Hemingway's 1917, § 2330; 1930, § 2186; 1942, § 908; Laws, 1972, ch. 343, § 1; Laws, 2001, ch. 495, § 34; Laws, 2015, ch. 395, § 5, eff from and after July 1, 2015.

Cross References — Provision that the state shall have all the liens, rights, and remedies accorded to landlords in this chapter, see § 29-1-107.

Exclusion of landlord's lien from operation of Uniform Commercial Code relating to secured transactions, see § 75-9-104.

Liens generally, see §§ 85-7-1 through 85-7-9.

Enforcement of liens generally, see §§ 85-7-141 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Persons entitled to lien.
3. Advances and supplies.
4. Existence of relation of landlord and tenant.
5. —Tenant under land contract.
6. Rights and liabilities of sublessees.
7. Rights and liabilities of purchasers of agricultural products.
8. Waiver of, or estoppel to assert, lien.
9. Priority of lien.
10. Enforcement of lien.
11. Liability of landlord to persons supplying tenant.
12. Miscellaneous.

1. In general.

The landlord lien statute (§ 89-7-51) does not provide for the ejectment of a tenant from the leased premises for failure to pay rent, but merely gives a landlord a subordinate lien on all articles of personal property. Bender v. North Meridian Mobile Home Park, 636 So. 2d 385, 1994 Miss. LEXIS 160 (Miss. 1994).

In determining whether a lien will be extended to include the proceeds of a crop sale, courts look to whether: (1) the crop lender was aware of the landlord/tenant relationship; (2) the crop lender was involved in the sale; (3) the crop lender obtained a subordination agreement from the landlord; or (4) whether the landlord expressly or impliedly waived its statutory lien. Planters Bank & Trust Co. v. Sklar, 555 So. 2d 1024, 1990 Miss. LEXIS 1 (Miss. 1990).

Landlord Lien statute affords unpaid landlord no rights in property of third persons on landlord's premises. By analogy, landlord should not acquire lien under § 89-7-51(2) on property not belonging to lessee. Hicks v. Thomas, 516 So. 2d 1344, 1987 Miss. LEXIS 2949 (Miss. 1987).

In determining whether landlord is entitled to lien on crops securing rent of tenant house off leased premises, question is whether house was reasonably necessary to enable tenants to properly carry out farming operations. Dale v. Webb, 166 Miss. 309, 146 So. 875, 1933 Miss. LEXIS 364 (Miss. 1933).

Title to stolen crop when rent reserved therefrom held to be in tenant until division of the crop is made. Bethany v. State, 124 Miss. 870, 87 So. 410, 1921 Miss. LEXIS 186 (Miss. 1921).

Under lease for year title to crop vests in tenant subject to landlord's lien. Opperman v. Littlejohn, 98 Miss. 636, 54 So. 77, 1910 Miss. LEXIS 102 (Miss. 1910).

Merchants receiving crop to ship out of state and credit on tenant's account held liable to extent of landlord's lien. Peets & Norman Co. v. Baker, 95 Miss. 576, 48 So. 898, 1909 Miss. LEXIS 247 (Miss. 1909).

The lien given a landlord under this section [Code 1942, § 908] is effectual to secure the rent of the dwelling house appurtenant to the farm, as well as the rent of arable lands. Scroggins v. Foster, 76 Miss. 318, 24 So. 194, 1898 Miss. LEXIS 76 (Miss. 1898).

A landlord has no lien upon his tenant's goods, other than agricultural products, and, before distress for rent, a bona fide purchaser of such goods, whether on or off the leased premises, will be protected. Richardson v. McLaurin, 69 Miss. 70, 12 So. 264, 1891 Miss. LEXIS 104 (Miss. 1891).

The lien is only given upon the agricultural products, and is not affected by their removal from the premises. Henry v. Davis, 60 Miss. 212, 1882 Miss. LEXIS 33 (Miss. 1882); Fitzgerald v. Fowlkes, 60 Miss. 270, 1882 Miss. LEXIS 49 (Miss. 1882); Tennessee Joint Stock Land Bank v. Bank of Greenwood, 179 Miss. 534, 172 So. 323, 1937 Miss. LEXIS 2 (Miss. 1937).

There is no lien, except on the agricultural products, before the levy of attachment. Marye v. Dyche, Gates, Gillespie & Co., 42 Miss. 347, 1869 Miss. LEXIS 1 (Miss. 1869).

2. Persons entitled to lien.

A landlord holding the tenant's note for rent, who during the term and before the rent is due, conveys the rented land, cannot thereafter attach for the rent. The conveyance carries with it, as an incident, the note. Watkins v. Duvall, 69 Miss. 364, 13 So. 727, 1891 Miss. LEXIS 150 (Miss. 1891).

One who was landlord, after conveying the premises to a third person, has no lien for supplies thereafter advanced by him during the term to enable the tenant to make a crop on the land. Watkins v. Duvall, 69 Miss. 364, 13 So. 727, 1891 Miss. LEXIS 150 (Miss. 1891).

The assignment of the rent and lease carries with it the lien. Taylor v. Nelson, 54 Miss. 524, 1877 Miss. LEXIS 42 (Miss. 1877); Newman v. Bank of Greenville, 66 Miss. 323, 5 So. 753, 1889 Miss. LEXIS 103 (Miss. 1889).

3. Advances and supplies.

Under circumstances advances held made by landlord to tenant through third person, and so secured by landlord's lien. Moak v. Moak, 150 Miss. 289, 116 So. 286, 1928 Miss. LEXIS 105 (Miss. 1928).

Fees for medical services rendered tenant and family are "advances for supplies" within lien statute. Moak v. Moak, 150 Miss. 289, 116 So. 286, 1928 Miss. LEXIS 105 (Miss. 1928).

Lien on crop exists for supplies furnished previous year. Sprouse v. Davis, 141 Miss. 564, 106 So. 824, 1926 Miss. LEXIS 462 (Miss. 1926).

Persons furnishing receiver money with which to gather tenant's cotton crop does not acquire lien on other cotton grown on leased premises. Goodwin v. Mitchell, 38 So. 657 (Miss. 1905).

Abandonment by tenant not justified by failure of landlord to furnish meat and clothing, unless landlord obligated himself to do so. Petty v. Leggett, 38 So. 549 (Miss. 1905).

Mules are "supplies," and taking a separate note for their price, reciting that a lien on them and the crop is retained until it is paid, is not a waiver of the landlord's lien. Trimble v. Durham, 70 Miss. 295, 12 So. 207, 1892 Miss. LEXIS 104 (Miss. 1892).

The lien does not exist if the landlord merely guarantees the payment for supplies advanced by another. The relation of creditor and debtor must exist between the landlord and tenant to support the lien. Ellis v. Jones, 70 Miss. 60, 11 So. 566, 1892 Miss. LEXIS 55 (Miss. 1892).

Advances of supplies for one year cannot be treated as advances for the next so as to be a lien on the products produced the latter year. Lumbley v. Gilruth, 65 Miss. 23, 3 So. 77, 1887 Miss. LEXIS 7 (Miss. 1887).

4. Existence of relation of landlord and tenant.

Where lands were rented to several tenants under their agreements to pay one-third of the cotton and seed, with the landlord paying one-third of the cost of fertilizer, poison and ginning, the relationship of landlord and tenant came into existence and title to and possession of the crop was vested in the tenant, subject to the landlord's paramount lien to secure the payment of rent. Lewis v. Latham, 224 Miss. 107, 79 So. 2d 811, 1955 Miss. LEXIS 466 (Miss. 1955).

Where former litigation between the parties to a deed of trust and the decree therein established that the parties were claiming title to the land in question adversely to each other, the relation of landlord and tenant necessary to found a landlord's lien for agricultural products grown on the land during such period of litigation did not exist; and the record in such litigation was an estoppel on the mortgagee to claim that relation. Riley v. Hardy, 185 Miss. 765, 189 So. 514, 1939 Miss. LEXIS 187 (Miss. 1939).

The relation of landlord and tenant must exist as a result of contract, either express or implied, in order to give the former a lien on the agricultural products produced on the land. Riley v. Hardy, 185 Miss. 765, 189 So. 514, 1939 Miss. LEXIS 187 (Miss. 1939).

Relation of landlord and tenant did not exist between mortgagors disputing right to possession of purchaser under deed of trust so as to create lien on agricultural products. Raleigh State Bank v. Williams, 150 Miss. 766, 117 So. 365, 1928 Miss. LEXIS 183 (Miss. 1928).

No particular form of expression is necessary to create a lease. Board of Sup'rs v. Imperial Naval Stores Co., 93 Miss. 822, 47 So. 177 (Miss. 1908).

Lease of land for 99 years or more is governed by principles of estates for years and gives no right to fee. Moss Point Lumber Co. v. Board of Sup'rs, 89 Miss. 448, 42 So. 290, 1906 Miss. LEXIS 103 (Miss. 1906).

A contract that one of the parties is to furnish the other a dwelling house for himself and family with adjacent lands, and with teams and utensils, and that such other is to cultivate the land and pay one-half the crop for the use of the property, creates the relation of landlord and tenant. Schlicht v. Callicott, 76 Miss. 487, 24 So. 869, 1898 Miss. LEXIS 102 (Miss. 1898).

5. —Tenant under land contract.

Contract to convey may stipulate that annual notes in payment will be collected as rental value of the land. Pennington v. Richie, 102 Miss. 133, 58 So. 657 (Miss. 1911).

Purchaser in possession under parol contract did not create relation of landlord and tenant by executing rent notes promising to pay one bale of cotton to vendor if he should decide not to take the place. Pennington v. Richie, 102 Miss. 133, 58 So. 657 (Miss. 1911).

Upon vendee in possession under bond for title failing to pay installments, parties assumed relation of landlord and tenant. W. L. Robinson Co. v. Weathersby, 101 Miss. 724, 57 So. 983, 1911 Miss. LEXIS 146 (Miss. 1911).

Peremptory instruction for rent held erroneous where notes given for the purchase price. Caston v. Turner, 95 Miss. 303, 48 So. 721, 1909 Miss. LEXIS 235 (Miss. 1909).

Under contract to convey, overpayment on first installment should be applied on second year's rent. Flowers-Carruth Co. v. J. L. Moyse & Bros., 95 Miss. 174, 48 So. 523, 1909 Miss. LEXIS 218 (Miss. 1909).

Where purchase money notes are given and the deed specified that they shall be considered as rent, and that a landlord's lien is retained, the holder has a valid equitable lien upon the agricultural products. Maynard v. Cocke, 71 Miss. 493, 15 So. 788, 1893 Miss. LEXIS 88 (Miss. 1893).

6. Rights and liabilities of sublessees.

Landlord held entitled to lien on crops, whether produced by tenant or subtenant. Dale v. Webb, 166 Miss. 309, 146 So. 875, 1933 Miss. LEXIS 364 (Miss. 1933).

Subtenant by reason of liability of his crops to landlord's lien, held a surety for original tenant's debt for supplies. Powell v. Tomlinson, 129 Miss. 354, 92 So. 226, 1922 Miss. LEXIS 47 (Miss. 1922).

Lessor held not entitled to retain goods of deceased lessee to pay indebtedness of sublessee. Hyatt v. Southern R. Co., 88 Miss. 546, 41 So. 3, 1906 Miss. LEXIS 158 (Miss. 1906).

Lessee held not liable for advances made to sublessee without his consent. Hyatt v. Southern R. Co., 88 Miss. 546, 41 So. 3, 1906 Miss. LEXIS 158 (Miss. 1906).

Where one has purchased from the tenant crops subject to lien, a subtenant may compel the landlord first to enforce the liability of such purchaser for the value of the crop purchased. Applewhite v. Nelms, 71 Miss. 482, 14 So. 443, 1893 Miss. LEXIS 104 (Miss. 1893).

A subtenant occupies the relation of surety for the rent due by the tenant, and in equity may compel the landlord to first resort to the estate of the tenant and preserve whatever securities he may have from the tenant, so that the subtenant, whose crop is taken for rent, may be subrogated thereto. Applewhite v. Nelms, 71 Miss. 482, 14 So. 443, 1893 Miss. LEXIS 104 (Miss. 1893); Dale v. Webb, 166 Miss. 309, 146 So. 875, 1933 Miss. LEXIS 364 (Miss. 1933); Hooks v. Burns, 168 Miss. 723, 152 So. 469, 1934 Miss. LEXIS 374 (Miss. 1934).

7. Rights and liabilities of purchasers of agricultural products.

Landlord's lien on agricultural products as security for unpaid rent is paramount to rights of purchaser of warehouse receipts for product issued in tenant's name in absence of proof that tenant has dealt honestly with his landlord. Phillips v. Box, 204 Miss. 231, 37 So. 2d 266, 1948 Miss. LEXIS 358 (Miss. 1948).

Bona fide purchaser of warehouse receipts held to acquire stored cotton free from landlord's lien. McGee v. Carver, 141 Miss. 463, 106 So. 760, 1926 Miss. LEXIS 444 (Miss. 1926).

Purchaser of cotton from tenant held liable to landlord for rent. Walker-Durr Co. v. Mitchell, 97 Miss. 231, 52 So. 583, 1910 Miss. LEXIS 248 (Miss. 1910).

A landlord has a lien to secure his rent and supplies for the current year on all agricultural products raised on the leased premises and may assert it against the products or the purchaser, with or without notice of such products. Ball, Brown & Co. v. Sledge, 82 Miss. 749, 35 So. 447, 1903 Miss. LEXIS 203 (Miss. 1903); Tennessee Joint Stock Land Bank v. Bank of Greenwood, 179 Miss. 534, 172 So. 323, 1937 Miss. LEXIS 2 (Miss. 1937).

The lien does not follow the agricultural products out of the state, and one who purchases them out of the state takes free of the lien, although he had notice of its existence. Millsaps v. Tate, 75 Miss. 150, 21 So. 663, 1897 Miss. LEXIS 86 (Miss. 1897); Ball, Brown & Co. v. Sledge, 82 Miss. 749, 35 So. 447, 1903 Miss. LEXIS 203 (Miss. 1903).

A commission merchant in another state who has made advances to a planter and received and sold in good faith cotton shipped by him for his account, is not answerable for the proceeds thereof to one who had a landlord's lien on the cotton when shipped. Chism v. Thomson, 73 Miss. 410, 19 So. 210, 1895 Miss. LEXIS 152 (Miss. 1895).

A purchaser of agricultural products grown on land in the adverse possession of another is not liable to account to the true owner of the land for the value of such products, even though he knew at the time he bought them of the want of title to the land of the occupant and who was the real owner of the land. Morgan v. Long, 73 Miss. 406, 19 So. 98, 1895 Miss. LEXIS 130 (Miss. 1895).

Neither ignorance as to the tenancy by a purchaser, nor false statement by the tenant as to his right to sell will defeat the landlord's claim. Warren v. Jones, 70 Miss. 202, 14 So. 25, 1892 Miss. LEXIS 145 (Miss. 1892).

The landlord's right to recover from one to whom the agricultural products grown on the demised premises have been sold by the tenant is not affected by want of notice by the purchaser that the rent is due; the rule of caveat emptor applies.

Eason v. Johnson, 69 Miss. 371, 12 So. 446, 1891 Miss. LEXIS 114 (Miss. 1891).

The lien will prevail against a bona fide purchaser for value. Newman v. Bank of Greenville, 66 Miss. 323, 5 So. 753, 1889 Miss. LEXIS 103 (Miss. 1889); W. L. Robinson Co. v. Weathersby, 101 Miss. 724, 57 So. 983, 1911 Miss. LEXIS 146 (Miss. 1911).

It being a crime for a person with notice of the lien to remove the products from the leased premises without the landlord's consent, the landlord can maintain an action for damages against the purchaser with notice of products subject to the lien for rent, etc. Cohn v. Smith, 64 Miss. 816, 2 So. 244, 1887 Miss. LEXIS 110 (Miss. 1887).

8. Waiver of, or estoppel to assert, lien.

A landlord did not waive her right to the statutory landlord's lien merely because the lease contract did not specifically refer to the landlord's lien statute since the landlord's lien exists by positive law without writing or record. Planters Bank & Trust Co. v. Sklar, 555 So. 2d 1024, 1990 Miss. LEXIS 1 (Miss. 1990).

A landlord's conduct did not constitute a waiver of the landlord's lien, even though the landlord permitted the lessee to harvest, market and sell the crops as he saw fit, where, for the most part, rent was paid prior to the harvest and sale of crops, and the lender had actual notice of its debtor's landlord/tenant relationship. Planters Bank & Trust Co. v. Sklar, 555 So. 2d 1024, 1990 Miss. LEXIS 1 (Miss. 1990).

A landlord's lien under this section [Code 1942, § 908] can be waived. Martin v. Leflore Bank & Trust Co., 220 Miss. 106, 70 So. 2d 66, 1954 Miss. LEXIS 414 (Miss. 1954).

Proof of waiver of landlord's lien on agricultural products for rent must be established by preponderant testimony which affirmatively shows an agreement by landlord, or conduct tantamount thereto, that tenant may deal with product as if free of any lien. Phillips v. Box, 204 Miss. 231, 37 So. 2d 266, 1948 Miss. LEXIS 358 (Miss. 1948).

Waiver of landlord's lien in favor of purchaser of warehouse receipts for product, issued in tenant's name, is not shown by evidence that landlord accepted farm equipment as part payment of rent and offered to accept tenant's notes for balance, which offer tenant ignored and had cotton crop ginned, baled and placed in warehouse taking warehouse receipts in his own name and selling warehouse receipts, all without knowledge of landlord who attached cotton promptly after locating it in warehouse. Phillips v. Box, 204 Miss. 231, 37 So. 2d 266, 1948 Miss. LEXIS 358 (Miss. 1948).

Evidence held to establish that landlord did not, by its conduct, impliedly permit tenant to store cotton in compress, take warehouse receipts therefor in tenant's name, and dispose of receipts, so as to waive landlord's lien on cotton. Tennessee Joint Stock Land Bank v. Bank of Greenwood, 179 Miss. 534, 172 So. 323, 1937 Miss. LEXIS 2 (Miss. 1937).

Evidence held not to warrant finding that landlord clothed tenant with indicia of ownership of cotton, or was negligent, or lacking in vigilance, so as to be estopped from asserting lien on cotton as against bona fide purchasers of negotiable warehouse receipts, issued in name of tenant, for cotton. Tennessee Joint Stock Land Bank v. Bank of Greenwood, 179 Miss. 534, 172 So. 323, 1937 Miss. LEXIS 2 (Miss. 1937).

To effect waiver of landlord's lien on agricultural products, evidence must preponderate that landlord either affirmatively agreed to permit, or by his conduct and course of pleadings permitted, tenant to deal with agricultural products as though they had been freed from landlord's lien. Tennessee Joint Stock Land Bank v. Bank of Greenwood, 179 Miss. 534, 172 So. 323, 1937 Miss. LEXIS 2 (Miss. 1937).

Waiver of lien of rent held limited, and to give no right to buy from tenant. Pitts v. Baskin, 140 Miss. 443, 106 So. 10, 1925 Miss. LEXIS 278 (Miss. 1925).

Landlord held estopped to assert lien on crops. Judd v. Delta Grocery & Cotton Co., 133 Miss. 866, 98 So. 243, 1923 Miss. LEXIS 191 (Miss. 1923).

Landlord who habitually permits sharecrop tenant to sell products cannot enforce landlord's lien against or recover value of products from good faith purchaser. Phillips v. Thomas, 128 Miss. 729, 91 So. 420, 1922 Miss. LEXIS 160 (Miss. 1922).

Landlord permitting tenant to sell cotton and receiving rent from proceeds, held estopped to assert lien for advances where he gave no notice thereof to purchaser. A. C. Seavey & Sons v. Godbold, 99 Miss. 113, 54 So. 838, 1910 Miss. LEXIS 23 (Miss. 1910).

A landlord who has waived his lien in favor of one who advances supplies to the tenant on the security of a trust deed on his cotton crop, after receiving from the tenant four bales and mingling them with his own, is estopped to deny that a bale of cotton seized by the trustee was grown by the tenant on the premises. Alexander v. Zeigler, 84 Miss. 560, 36 So. 536, 1904 Miss. LEXIS 64 (Miss. 1904).

A landlord who waives his lien for a specified sum to enable his tenant to secure advances from another by a deed of trust on his crops is bound by the waiver, although the deed of trust recites that the advances were to be used in making crops on other lands also and does not expressly require advances to the full extent of the waiver. Dreyfus v. W. A. Gage & Co., 84 Miss. 219, 36 So. 248, 1904 Miss. LEXIS 29 (Miss. 1904).

9. Priority of lien.

Two lessors did not have priority over a bank with a perfected lien on a lessee's government payments, even though the bank had actual notice of the leases before it loaned money to the lessee as: (1) Miss. Code Ann. § 75-9-109(a)(2) applied to agricultural liens; (2) perfection of agricultural liens was required under Miss. Code Ann. §§ 89-7-51(1) and 75-9-101 et seq.; (3) the lessors did not perfect their liens; (4) there was no fact issue as to whether there was confidential relationship between the bank and the lessors for constructive trust purposes; and (5) the bank was not unjustly enriched as it was entitled to apply the government payments to the lessee's loan. Pair A Dice Farms, Inc. v. InSouth Bank of Covington, 118 So. 3d 165, 2012 Miss. App. LEXIS 802 (Miss. Ct. App. 2012), cert. denied, 2013 Miss. LEXIS 387 (Miss. July 25, 2013), cert. denied, 117 So. 3d 330, 2013 Miss. LEXIS 388 (Miss. 2013).

Unless the crop lender has taken steps to subordinate a landlord's statutory priority, the landlord's interest in the proceeds of a crop sale will be paramount to the crop lender who receives the proceeds. The landlord has the inside track in a priority clash over the proceeds of a crop sale. Planters Bank & Trust Co. v. Sklar, 555 So. 2d 1024, 1990 Miss. LEXIS 1 (Miss. 1990).

Unless a landlord has expressly or impliedly waived the statutory landlord's lien, its rights are superior to all other interests, including those created by Chapter 9 of the Uniform Commercial Code. Planters Bank & Trust Co. v. Sklar, 555 So. 2d 1024, 1990 Miss. LEXIS 1 (Miss. 1990).

Where the bank advances money to a tenant who with the landlord gave the bank a trust deed and the landlord taking a subordinate trust deed to tenant's farm machinery and equipment and later the bank without knowledge of the landlord advanced more money to the tenant for the operation of the farm, and the tenant paid the bank from proceeds of sale of crops, the bank applying the proceeds on the first loan and also on loan advanced without knowledge of landlord, the landlord had a superior lien on the crops because the bank was not authorized to apply proceeds on the loan made without knowledge of landlord. Cavins v. Planters Bank & Trust Co., 187 F.2d 906, 1951 U.S. App. LEXIS 2339 (5th Cir. Miss. 1951).

Plaintiff held to have waived lien for ginning charges on cotton by delivering to landlord without notice of his lien. Patterson v. Jones-Wilson Mercantile Co., 117 Miss. 355, 78 So. 294, 1918 Miss. LEXIS 186 (Miss. 1918).

Landlord's lien or that of seller under contract to convey is superior to lien of deed of trust given by tenant on crop for advances of supplies. Bedford v. Gartrell, 88 Miss. 429, 40 So. 801, 1906 Miss. LEXIS 136 (Miss. 1906).

Landlord's lien held superior to that of person furnishing money to tenant with which to gather crop. Goodwin v. Mitchell, 38 So. 657 (Miss. 1905).

The owner of a cotton gin and press who gins and bales cotton, furnishing the bagging and ties, and who is paid therefor by the tenant, has a lien thereon superior to all other liens for his services, where its preparation for market is not otherwise provided for by the landlord or other interested parties. Duncan v. Jayne, 76 Miss. 133, 23 So. 392, 1898 Miss. LEXIS 55 (Miss. 1898).

10. Enforcement of lien.

In order for a landlord to enforce the statutorily-created lien on a tenant's personal property, he or she must follow the attachment for rent statutes (§§ 89-7-55 through 89-7-125). Bender v. North Meridian Mobile Home Park, 636 So. 2d 385, 1994 Miss. LEXIS 160 (Miss. 1994).

The landlord is not confined to the statutory remedy; the lien is broader. Henry v. Davis, 60 Miss. 212, 1882 Miss. LEXIS 33 (Miss. 1882); Fitzgerald v. Fowlkes, 60 Miss. 270, 1882 Miss. LEXIS 49 (Miss. 1882); Cohn v. Smith, 64 Miss. 816, 2 So. 244, 1887 Miss. LEXIS 110 (Miss. 1887); Newman v. Bank of Greenville, 66 Miss. 323, 5 So. 753, 1889 Miss. LEXIS 103 (Miss. 1889).

The lien can be enforced after the termination of the lease. Fitzgerald v. Fowlkes, 60 Miss. 270, 1882 Miss. LEXIS 49 (Miss. 1882).

11. Liability of landlord to persons supplying tenant.

Landlord waiving lien in favor of person supplying tenant, who took deed of trust on crop, liable to extent of waiver on collecting note out of crop; before landlord can be held on waiver of lien on crops raised by tenant by person holding deed of trust from tenant, other securities embraced therein must be resorted to. H. & C. Newman, Inc. v. Delta Grocery & Cotton Co., 138 Miss. 683, 103 So. 373, 1925 Miss. LEXIS 85 (Miss. 1925).

The landlord, in an action against him and the tenant, cannot be held liable for goods sold to the tenant merely upon proof that he waived in plaintiff's favor his landlord's lien on the crop and afterwards appropriated the same. Whether he would be liable in another form of action is not decided. Chism v. Alcorn, 71 Miss. 506, 15 So. 73, 1893 Miss. LEXIS 109 (Miss. 1893).

12. Miscellaneous.

Render of judgment in favor of a tenant on the tenant's unlawful-reentry issue was appropriate because the evidence showed that the landlord acted without authority in using self-help to reenter the leased property, as the lease did not provide for such action, and failed to provide the tenant with a notice and hearing before reentering the property. Crowell v. Butts, 153 So. 3d 719, 2013 Miss. App. LEXIS 866 (Miss. Ct. App. 2013), cert. denied, 145 So. 3d 674, 2014 Miss. LEXIS 395 (Miss. 2014).

A landlord's actions in locking up a tenant's possessions pursuant to § 89-7-51(2) did not violate due process requirements where the landlord failed to use the attachment for rent statutes; since § 89-7-51 did not authorize the landlord to use self-help to seize the tenant's property, there was no state action. Bender v. North Meridian Mobile Home Park, 636 So. 2d 385, 1994 Miss. LEXIS 160 (Miss. 1994).

Landlord is liable for conversion of personal property belonging to tenant found on leased premises on taking possession because of nonpayment of rent. Clark v. Service Auto Co., 143 Miss. 602, 108 So. 704, 1926 Miss. LEXIS 299 (Miss. 1926).

Lease contract that landlord may reenter without legal proceedings is binding to extent that landlord, entitled to possession unlawfully withheld, may re-enter without breaking doors or passages of ingress and without personal violence. Clark v. Service Auto Co., 143 Miss. 602, 108 So. 704, 1926 Miss. LEXIS 299 (Miss. 1926).

Landlord, undertaking to sell tenant's property and settle with subtenants and heirs without taking out letters of administration or proceeding according to statutes, held liable as administrator de son tort. Blount v. Phillips, 142 Miss. 286, 107 So. 21, 1926 Miss. LEXIS 56 (Miss. 1926).

No suit lies for rent before it is due; on abandonment of performance of share contract landlord may at once sue for breach. Weir v. Cooper, 122 Miss. 225, 84 So. 184, 1920 Miss. LEXIS 430 (Miss. 1920).

Landlord with knowledge of deed of trust, who had waived his lien except for rent in favor of such deed of trust, who sold the crop himself and after deducting amount due him paid balance to the tenant instead of the mortgagee, was guilty of conversion. Evans v. Carpenter, 115 Miss. 572, 76 So. 550, 1917 Miss. LEXIS 235 (Miss. 1917).

Creditor secured by deed of trust, not excused for failure to enter satisfaction of deed of trust on margin of record, where crop delivered in satisfaction of debt with landlord's consent, though being liable for rent. Coon v. Robinson Mercantile Co., 110 Miss. 700, 70 So. 884, 1916 Miss. LEXIS 192 (Miss. 1916).

An assignee of notes given by a tenant to his landlord for rent cannot assert his lien against one who makes advances to the tenant on the security of the landlord's waiver and the tenant's trust deed on the crops when he has concealed his ownership of the notes and induced him to believe that the landlord's waiver and the tenant's trust deed will give him first lien. Dreyfus v. W. A. Gage & Co., 84 Miss. 219, 36 So. 248, 1904 Miss. LEXIS 29 (Miss. 1904).

A creditor receiving in this state in payment of his debt cotton taken from him under a landlord's lien may enforce repayment from the debtor, although he had executed a receipt in full upon receiving the cotton. He cannot do this, however, if he received the cotton out of the state. Ball, Brown & Co. v. Sledge, 82 Miss. 749, 35 So. 447, 1903 Miss. LEXIS 203 (Miss. 1903).

RESEARCH REFERENCES

ALR.

Modern views as to validity, under federal constitution, of state prejudgment attachment, garnishment, and replevin procedures, distraint procedures under landlords' or innkeepers' lien statutes, and like procedures authorizing summary seizure of property. 18 A.L.R. Fed. 223.

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant §§ 545 et seq.

7 Am. Jur. Legal Forms 2d, Crops § 80:26 (lease-provision-lessor's title in crops until payment of rent).

11B Am. Jur. Legal Forms 2d, Leases of Real Property §§ 161:1134-161:1136 (waiver of lessor's lien).

12 Am. Jur. Legal Forms 2d, Liens § 165:22 (notice of landlord's lien and of sale).

CJS.

52 C.J.S., Landlord and Tenant §§ 1199 et seq.

§ 89-7-53. Lien for live stock, implements and vehicles.

A landlord shall have, for one (1) year, a lien for the reasonable value of all live stock, farming tools, implements and vehicles furnished by him to his tenant, upon the property so furnished and, as an additional security therefor, upon all the agricultural products raised upon the leased premises. The said property so furnished shall be considered as supplies and the lien therefor may be enforced accordingly. Such lien shall be a superior and first lien when perfected in accordance with Uniform Commercial Code Article 9 – Secured Transactions (Section 75-9-101 et seq.), and need not otherwise be evidenced by writing.

HISTORY: Codes, 1892, § 2496; 1906, § 2833; Hemingway's 1917, § 2331; 1930, § 2187; 1942, § 909; Laws, 2001, ch. 495, § 35, eff from and after Jan. 1, 2002.

Cross References — Provision that the state shall have all the liens, rights, and remedies accorded to landlords in this chapter, see § 29-1-107.

Materialman's lien, see § 85-7-131.

RESEARCH REFERENCES

Am. Jur.
49 Am. Jur. 2d, Landlord and Tenant § 560.

CJS.
52 C.J.S., Landlord and Tenant §§ 1227 et seq.

§ 89-7-55. Attachment for rent and supplies; who entitled to and for what.

An attachment or distress may be sued out by the lessor of lands, his executors, administrators, or assigns. It may be had for rent of the leased premises due and in arrear, or to become due, as the case may be, and for advances made by the landlord or his administrator or executor for supplies for the tenant and others for whom the tenant may have contracted and for his business carried on upon the leased premises.

HISTORY: Codes, 1892, § 2501; 1906, § 2838; Hemingway's 1917, § 2336; 1930, § 2188; 1942, § 910.

Cross References — Attachments against debtors generally, see §§ 11-33-1 et seq.

Fee of officer issuing attachment or distress for rent or supplies, see § 25-7-77.

Provision that the state shall have all the liens, rights, and remedies accorded to landlords in this chapter, see § 29-1-107.

Distraint of goods removed before debt becomes due, see § 89-7-77.

Tenant's remedy against landlord for improper distress, see § 89-7-115.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Claims within scope of statute.
3. Effect of transfer of title to leased property.
4. Rights of assignee of rent note.
5. Sale of tenant's goods; assignment for creditors.
6. Liability of sublessee.
7. Procedure.

1. In general.

Render of judgment in favor of a tenant on the tenant's unlawful-reentry issue was appropriate because the evidence showed that the landlord acted without authority in using self-help to reenter the leased property, as the lease did not provide for such action, and failed to provide the tenant with a notice and hearing before reentering the property. Crowell v. Butts, 153 So. 3d 719, 2013 Miss. App. LEXIS 866 (Miss. Ct. App. 2013), cert. denied, 145 So. 3d 674, 2014 Miss. LEXIS 395 (Miss. 2014).

In order for a landlord to enforce the statutorily-created lien on a tenant's personal property, he or she must follow the attachment for rent statutes (§§ 89-7-55 through 89-7-125). Bender v. North Meridian Mobile Home Park, 636 So. 2d 385, 1994 Miss. LEXIS 160 (Miss. 1994).

Attachment for rent is not of itself judicial proceeding. Barlow v. Serio, 129 Miss. 432, 91 So. 573, 1922 Miss. LEXIS 9 (Miss. 1922).

Distress for rent, not being a judicial proceeding, depends for its validity upon compliance with the statute in making the required affidavit and bond. Pate v. Shannon, 69 Miss. 372, 13 So. 729, 1891 Miss. LEXIS 153 (Miss. 1891).

There must be a lease to entitle to the remedy. Tifft v. Verden, 19 Miss. 153, 1848 Miss. LEXIS 165 (Miss. 1848).

2. Claims within scope of statute.

Clause in lease prohibiting removal of property while rent unpaid, if creating equitable lien, was not enforceable by statutory remedy of distress for rent. Lake v. Morson, 164 Miss. 401, 145 So. 337, 1933 Miss. LEXIS 237 (Miss. 1933).

Stipulation for attorney's fee in rent note not enforceable in attachment for rent. O'Keefe v. McLemore, 125 Miss. 394, 87 So. 655, 1921 Miss. LEXIS 122 (Miss. 1921).

The statute only covers a demand for rent. An agreement of the tenant as part of the expressed consideration of the lease, to pay as rent a debt which is not such in fact, will not change this. Paxton v. Kennedy, 70 Miss. 865, 12 So. 546, 1893 Miss. LEXIS 2 (Miss. 1893).

A promise to pay the taxes for a given year on a certain tract of land for the rent of premises is sufficiently definite as to amount to give the landlord a lien. Roberts v. Sims, 64 Miss. 597, 2 So. 72, 1887 Miss. LEXIS 76 (Miss. 1887).

It will be sufficient if the amount of the rent can be ascertained by calculation. Brooks v. Cunningham, 49 Miss. 108, 1873 Miss. LEXIS 100 (Miss. 1873); Thrasher v. Gillespie, 52 Miss. 840, 1876 Miss. LEXIS 304 (Miss. 1876); Roberts v. Sims, 64 Miss. 597, 2 So. 72, 1887 Miss. LEXIS 76 (Miss. 1887).

The rent must be definite. Briscoe v. McElween, 43 Miss. 556, 1870 Miss. LEXIS 66 (Miss. 1870).

3. Effect of transfer of title to leased property.

The maker of a rent note, payable to bearer, and transferred in good faith for value before maturity, cannot show as a failure of consideration of the note that the title of his lessor passed to another before the term began. Davis v. Blanton, 71 Miss. 821, 15 So. 132, 1894 Miss. LEXIS 41 (Miss. 1894).

A landlord who takes the note of his tenant for rent, and afterwards, during the term and before the rent is due, conveys the rented land to another, cannot thereafter attach for the rent. Watkins v. Duvall, 69 Miss. 364, 13 So. 727, 1891 Miss. LEXIS 150 (Miss. 1891).

The purchaser of land at partition sale is entitled to the rent falling due after his purchase, if not expressly reserved, and may distrain therefor, notwithstanding a rent note previously given therefor had been assigned by the landlord to another, who contests the purchaser's right to such rent. Kessee v. Sloan, 69 Miss. 369, 11 So. 631, 1891 Miss. LEXIS 98 (Miss. 1891).

4. Rights of assignee of rent note.

The assignee of a rent note may distrain for the amount thereof. Coker v. Britt, 78 Miss. 583, 29 So. 833, 1900 Miss. LEXIS 177 (Miss. 1900).

The assignee of a rent note who has advanced supplies to the tenant on a parol agreement that he should be subrogated to all the rights of the landlord in respect thereto, is not made landlord thereby and cannot distrain for the supplies. Coker v. Britt, 78 Miss. 583, 29 So. 833, 1900 Miss. LEXIS 177 (Miss. 1900).

5. Sale of tenant's goods; assignment for creditors.

Bona fide purchaser of tenant's goods, other than agricultural products, before distress for the rent, is protected. White v. Miazza-Woods Const. Co., 122 Miss. 213, 84 So. 181, 1920 Miss. LEXIS 428 (Miss. 1920).

Goods liable to be attached for rent, assigned to an assignee in an ordinary voluntary assignment for creditors, may still be subjected to the landlord's demand. Paine v. Sykes, 72 Miss. 351, 16 So. 903, 1894 Miss. LEXIS 119 (Miss. 1894).

6. Liability of sublessee.

There is no privity of contract between a landlord and a subtenant, and the former cannot maintain an attachment for rent against the latter. Ashley v. Young, 79 Miss. 129, 29 So. 822, 1901 Miss. LEXIS 16 (Miss. 1901).

7. Procedure.

The agent must carry on the proceedings in the landlord's name. Parker v. Stovall, 31 Miss. 446, 1856 Miss. LEXIS 98 (Miss. 1856).

RESEARCH REFERENCES

ALR.

What sort of claim, obligation, or liability is within contemplation of statute providing for attachment, or giving right of action for indemnity, before a debt or liability is due. 58 A.L.R.2d 1451.

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant §§ 591, 615.

16 Am. Jur. Pl & Pr Forms (Rev), Landlord and Tenant, Form 134 (warrant for distraint of tenant's personalty to secure payment of rent).

CJS.

52 C.J.S., Landlord and Tenant §§ 1259, 1272 et seq.

Law Reviews.

Williamson and Redfern, Lender liability in Mississippi: Part II loan commitments and agreements. 59 Miss. L. J. 71, Spring, 1989.

§ 89-7-57. How obtained.

To obtain the attachment or distress, the party entitled thereto, his agent or attorney, shall make complaint on oath before a justice court judge averring the facts which entitle the party seeking it to the remedy; and, if anything is demanded on account of supplies, there shall be filed with the complaint an itemized bill of particulars thereof. The complainant shall enter into bond with sufficient sureties, payable to the tenant, his executor or administrator, in a penalty equal to double the sum claimed to be due, conditioned to pay all damages as may be sustained by the obligee by the wrongful suing out of the writ, and all costs that may be awarded against the principal obligor.

HISTORY: Codes, 1892, § 2502; 1906, § 2839; Hemingway's 1917, § 2337; 1930, § 2189; 1942, § 911; Laws, 2015, ch. 395, § 6, eff from and after July 1, 2015.

JUDICIAL DECISIONS

1. In general.

Judgment for lessee against lessor for amount by which total of sums agreed to be deducted from monthly rent and paid lessor's creditor by lessee exceeded rent for period before partial destruction of leased mill by fire will not be affirmed on remittitur of amount exceeding sums deductible for such period only, but must be reversed and cause remanded for entry of judgment in proper amount. Moore-Curry Lumber Co. v. Wogan, 170 Miss. 512, 155 So. 329, 1934 Miss. LEXIS 162 (Miss. 1934).

Attorney's fees are recoverable in suit for damages for attachment for rent. Wigginton v. Moore, 147 Miss. 169, 113 So. 326, 1927 Miss. LEXIS 346 (Miss. 1927).

Person acting as agent in renting land may not sue out attachment for rent. Wigginton v. Moore, 147 Miss. 169, 113 So. 326, 1927 Miss. LEXIS 346 (Miss. 1927).

In replevin for rent due where the attachment writ was not signed or sworn to, but the landlord testified that he had verified his complaint, which was denied, it was error to overrule a motion to quash the attachment and to refuse to submit the question to the jury. Wolf v. Simmons, 75 Miss. 539, 23 So. 586, 1897 Miss. LEXIS 147 (Miss. 1897).

Distress for rent, not being a judicial proceeding, depends for its validity upon compliance with the statute in making the required affidavit and bond. Pate v. Shannon, 69 Miss. 372, 13 So. 729, 1891 Miss. LEXIS 153 (Miss. 1891).

A landlord cannot unite several distinct claims for different parcels of land, under different demises, in a single attachment for rent; He must resort to distinct proceedings for each. Briscoe v. McElween, 43 Miss. 556, 1870 Miss. LEXIS 66 (Miss. 1870).

OPINIONS OF THE ATTORNEY GENERAL

Justice Court had jurisdiction over matter where landlord sought to enforce lien on personal property of tenant in amount of $7,000. Formby, March 23, 1994, A.G. Op. #94-0122.

RESEARCH REFERENCES

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant § 615.

16 Am. Jur. Pl & Pr Forms (Rev), Landlord and Tenant, Forms 132, 133 (landlord's bond in distress proceedings).

CJS.

52 C.J.S., Landlord and Tenant §§ 1287 et seq.

§ 89-7-59. Before whom complaint made.

Such complaint and bond may be made before any justice of the peace of the county in which the leased premises, or some part thereof, may be situated, or of any county in which the property, or some part thereof, sought to be distrained or seized may be found.

HISTORY: Codes, 1892, § 2503; 1906, § 2840; Hemingway's 1917, § 2338; 1930, § 2190; 1942, § 912.

Editor's Notes — Pursuant to Miss. Const. Art. 6, Section 171, all references in the Mississippi Code to "justice of the peace" shall mean justice court judge.

Cross References — Powers and duties of justice court judges generally, see §§ 11-9-101 et seq.

JUDICIAL DECISIONS

1. In general.

Judgment for lessee against lessor for amount by which total of sums agreed to be deducted from monthly rent and paid lessor's creditor by lessee exceeded rent for period before partial destruction of leased mill by fire will not be affirmed on remittitur of amount exceeding sums deductible for such period only, but must be reversed and cause remanded for entry of judgment in proper amount. Moore-Curry Lumber Co. v. Wogan, 170 Miss. 512, 155 So. 329, 1934 Miss. LEXIS 162 (Miss. 1934).

The mayor of a municipality who is ex officio a justice of the peace, may issue the attachment, and his jurisdiction in such case is co-extensive with the county. Smith v. Jones, 65 Miss. 276, 3 So. 740, 1887 Miss. LEXIS 53 (Miss. 1887).

The affidavit need not be made before the same officer who issues the writ, nor before an officer in the same county in which the writ is to run, but can be made before any officer authorized to administer oaths. Cassedy v. Mayers, 64 Miss. 356, 1 So. 510 (Miss. 1886).

§ 89-7-61. Writ.

When the complaint has been made and bond given and approved by the justice court judge, it shall be his duty to issue a distress warrant or attachment-writ, commanding the seizure of the agricultural products, if any, upon which the party instituting the proceedings shall have claimed a lien, and also commanding the officer to distrain the goods and chattels other than the agricultural products of the tenant, if necessary, and deal with the same as provided by law; the entire seizure and distraint to be of value sufficient to satisfy the sum demanded with interest and costs.

HISTORY: Codes, 1892, § 2504; 1906, § 2841; Hemingway's 1917, § 2339; 1930, § 2191; 1942, § 913; Laws, 2015, ch. 395, § 7, eff from and after July 1, 2015.

JUDICIAL DECISIONS

1. In general.

Judgment for lessee against lessor for amount by which total of sums agreed to be deducted from monthly rent and paid lessor's creditor by lessee exceeded rent for period before partial destruction of leased mill by fire will not be affirmed on remittitur of amount exceeding sums deductible for such period only, but must be reversed and cause remanded for entry of judgment in proper amount. Moore-Curry Lumber Co. v. Wogan, 170 Miss. 512, 155 So. 329, 1934 Miss. LEXIS 162 (Miss. 1934).

A seizure and sale by a town marshal acting as constable without the limits of the town and the supervisor's district in which the town is situated, under a distress warrant issued by the mayor of such town, are invalid and confer no title upon the purchaser at the sale. Riley v. James, 73 Miss. 1, 18 So. 930, 1895 Miss. LEXIS 117 (Miss. 1895).

RESEARCH REFERENCES

CJS.

52 C.J.S., Landlord and Tenant §§ 1286 et seq.

§ 89-7-63. Form of affidavit.

The affidavit for an attachment for rent and supplies, or either, may be in the following form, viz.:

"State of Mississippi,
________ County.

"Before me, ________, a justice of the peace of the County of ________, came ________, who, being duly sworn, says on oath: That ________ [the tenant] is indebted to him [or if the affidavit be made by an agent or attorney, strike out 'him' and insert the name of the landlord or person to whom the rent is due, and add after the landlord's name, 'of whom the affiant is agent'] in the sum of ________ dollars for rent in arrears [or if the rent be not due, strike out the words 'in arrears,' and insert 'to become due on the ________ day of ________, A.D. ________'] by virtue of a lease for the term commencing on the ________ day of ________, A.D. ________, and ending on the ________ day of ________, A.D. ________ of land situated in ________ County, and described as [here describe the leased premises; it is well to describe by name, if it has one, or by its occupants, and if such be the case it would be well to say 'and occupied by said ________, tenant, during the year ________'].

"And the said ________, the tenant, is further indebted to affiant [or if the oath be made by an agent or attorney, strike out 'affiant' and insert the name of the landlord or person to whom the debt is due] in the further sum of ________ dollars, now due [if the debt be not due, strike out the words 'now due,' and insert 'to become due on the ________ day of ________, A.D.'] ________ of which supplies a bill of particulars is attached hereto. Affiant [or if made by an agent or attorney, say 'affiant's said principal'] claims a lie the following agricultural products raised during the year ________, on the said leased premises [here describe the products, giving their location, if known, for the officer's guidance].

"Sworn to and subscribed before me, this the ________ day of ________, A.D. ________

________________, J.P."

(a) If the attachment be for rent only, strike out all relating to supplies; and if the claim be for supplies only, strike out all relating to the sum due for rent, and alter the form to suit the case.

(b) If the claim be not due, add to the form the following words: "And affiant has just cause to suspect, and does verily believe that the said tenant will remove [or has removed, as the case may be] his effects from said leased premises before said claim [or claims] be or shall become due, so that a distress or seizure cannot be made therefor, or so as to impair the landlord's lien on the agricultural products raised on the premises."

(c) If the rent be for part of the crop, or other thing than money, the affidavit should state it as it is, giving the money value of what is due.

HISTORY: Codes, 1892, § 2505; 1906, § 2842; Hemingway's 1917, § 2340; 1930, § 2192; 1942, § 914.

Editor's Notes — Pursuant to Miss. Const. Art. 6, Section 171, all references in the Mississippi Code to "justice of the peace" shall mean justice court judge.

JUDICIAL DECISIONS

1. In general.

Evidence sustained finding that new oral contract under which tenant was to pay what he could as reasonable rent for possession of land had replaced written contract, and verdict that landlord's attachment for rent was wrongfully sued out. Graham v. Swinney, 174 Miss. 579, 165 So. 438, 1936 Miss. LEXIS 208 (Miss. 1936).

Judgment for lessee against lessor for amount by which total of sums agreed to be deducted from monthly rent and paid lessor's creditor by lessee exceeded rent for period before partial destruction of leased mill by fire will not be affirmed on remittitur of amount exceeding sums deductible for such period only, but must be reversed and cause remanded for entry of judgment in proper amount. Moore-Curry Lumber Co. v. Wogan, 170 Miss. 512, 155 So. 329, 1934 Miss. LEXIS 162 (Miss. 1934).

In action by tenant's wife to replevy trucks which were attached by landlord as tenant's, whether wife was entitled to replevy, held for jury. Rollings v. Rosenbaum, 166 Miss. 499, 148 So. 384, 1933 Miss. LEXIS 390 (Miss. 1933).

Claimant of trucks which were attached

was required to show that they were bought in good faith for valuable consideration before levy was made. Rollings v. Rosenbaum, 166 Miss. 499, 148 So. 384, 1933 Miss. LEXIS 390 (Miss. 1933).

Stranger claimant is entitled to reasonable damages for wrongful attachment under same circumstances as tenant is entitled under statute. Rollings v. Rosenbaum, 166 Miss. 499, 148 So. 384, 1933 Miss. LEXIS 390 (Miss. 1933).

Tenant's wife who sought to replevy trucks wrongfully attached by landlord was entitled to reasonable attorney's fees, if prevailing. Rollings v. Rosenbaum, 166 Miss. 499, 148 So. 384, 1933 Miss. LEXIS 390 (Miss. 1933).

Landlord had no lien upon trucks which he attached and which were sold by tenant to his wife prior to attachment. Rollings v. Rosenbaum, 166 Miss. 499, 148 So. 384, 1933 Miss. LEXIS 390 (Miss. 1933).

Tenant's wife who showed deed of sale to her reciting valid consideration for tenant's trucks attached by landlord having made prima facie case, landlord had burden to establish fraud or other defense. Rollings v. Rosenbaum, 166 Miss. 499, 148 So. 384, 1933 Miss. LEXIS 390 (Miss. 1933).

Recital of valid consideration in deed of conveyance between husband and wife being prima facie true, burden of showing falsity of such recital rests upon party attacking deed. Rollings v. Rosenbaum, 166 Miss. 499, 148 So. 384, 1933 Miss. LEXIS 390 (Miss. 1933).

Affidavit of landlord as to lien to secure advances not conclusive; where evidence conflicting, issue should be submitted to jury. Striplin Cotton Co. v. Miller, 130 Miss. 430, 94 So. 227, 1922 Miss. LEXIS 300 (Miss. 1922).

RESEARCH REFERENCES

Am. Jur.

16 Am. Jur. Pl & Pr Forms (Rev), Landlord and Tenant, Form 125 (attachment affidavit).

§ 89-7-65. Form of bond.

The bond for an attachment for rent or supplies may be in the following form, viz.:

"We, ________, principal, and ________ and ________, sureties, bind ourselves to pay ________ the sum of ________ dollars, unless the said principal obligor herein shall pay to the said ________ all such damages as he shall sustain by reason of the wrongful suing out of an attachment for rent and supplies [if for rent only, strike out the words 'and supplies;' and if for supplies only, strike out the words 'rent and'] in favor of said principal obligor against the said obligee for ________ dollars, for rent and supplies [if for rent only, strike out the words 'and supplies;' and if for supplies only, strike out the words 'rent and'] due and in arrears [or if the attachment be for a debt to become due, strike out the words 'due and in arrears,' and insert 'to become due on the ________ day of ________, A.D. ________'] upon certain leased premises, in ________ County.

"Witness our hands, this the ________ day of ________, A.D. ________

"________________,
________________"

"The above bond is approved by me, this ________ day of ________, A.D. ________.

"________________, J.P."

HISTORY: Codes, 1892, § 2506; 1906, § 2843; Hemingway's 1917, § 2341; 1930, § 2193; 1942, § 915.

RESEARCH REFERENCES

Am. Jur.
16 Am. Jur. Pl & Pr Forms (Rev), Landlord and Tenant, Forms 132, 133 (landlord's bond in distress proceedings).

§ 89-7-67. Form of the writ.

The writ of attachment for rent and supplies, or either, may be in the following form, viz.:

"The State of Mississippi.

"To the sheriff or any constable of ________ County, greeting:

"Complaint on oath having been made before the undersigned, an acting justice of the peace in and for ________ County, that ________ is indebted to ________ for rent in arrear on the following leased premises [here describe the premises as in the affidavit], in the sum of ________ dollars, and that the said ________ is further indebted to ________ for supplies furnished the said ________, the tenant, by his landlord, in the sum of ________ dollars additional; and the claim having been made that there is a lien to secure the said debts on the following named agricultural products [here describe the products as in the affidavit], and bond having been given as required by law:

"Now, this is to command you that you forthwith seize and take the said agricultural products to an amount sufficient to satisfy the said debts, with interest and costs; and, if there be not a sufficiency of said products so to do, then that you distrain the other goods and chattels of the said ________, the tenant, so that your whole seizure may be sufficient to satisfy both of said sums, with interest and costs, and that you deal with the same as the law directs.

"Witness my hand, the ________ day of ________, A.D. ________

________________, J.P."

The above form must be varied so as to conform to the affidavit; and if a lien be not claimed, the command will be in these words:

"This is to command you to distrain the goods and chattels of the said ________, the tenant, to an amount sufficient to satisfy the said demands, with interest and costs, and that you deal with the same as the law directs."

HISTORY: Codes, 1892, § 2507; 1906, § 2844; Hemingway's 1917, § 2342; 1930, § 2194; 1942, § 916.

§ 89-7-69. Goods sold if not replevied.

The officer making a distress or seizure shall give notice thereof, with the cause of taking, to the tenant or his representative in person if found, or if not found, by leaving the notice at the dwelling house or other conspicuous place on the premises charged with the rent distrained for, and shall immediately advertise the property distrained or seized for sale as if under execution; and if the tenant or owner of the goods distrained or seized shall not, before the time appointed for the sale, replevy the same by giving bond with sufficient sureties, to be approved by such officer, payable to the plaintiff in the attachment, in double the amount claimed, conditioned for the payment of the sum demanded, with lawful interest for the same, and costs, at the end of three (3) months after making the distress, the officer shall sell the goods and chattels distrained or seized at public sale to the highest bidder for cash, and shall, out of the proceeds of the sale, pay the costs of the proceedings, and shall pay to the plaintiff the amount of his demand, with interest.

HISTORY: Codes, Hutchinson's 1848, ch. 56, art. 5(2); 1857, ch. 41, art. 2; 1871, § 1621; 1880, § 1303; 1892, § 2508; 1906, § 2845; Hemingway's 1917, § 2343; 1930, § 2195; 1942, § 917; Laws, 2015, ch. 395, § 8, eff from and after July 1, 2015.

Cross References — Replevin of agricultural products or other distrained property, see § 89-7-89.

Trial of replevin suits, see §§ 89-7-107 et seq.

JUDICIAL DECISIONS

1. In general.

Failure to serve notice if tenant readily found, ground for quashing writ. Wright v. Craig, 92 Miss. 218, 45 So. 835, 1908 Miss. LEXIS 180 (Miss. 1908).

Where party having right to quash comes in later and pleads, writ need not be quashed on remand after appeal. Wright v. Craig, 92 Miss. 218, 45 So. 835, 1908 Miss. LEXIS 180 (Miss. 1908).

The attachment is in the nature of an execution for a money demand, and is not the beginning of a suit. Towns v. Boarman, 23 Miss. 186, 1851 Miss. LEXIS 34 (Miss. 1851).

RESEARCH REFERENCES

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant § 616.

16 Am. Jur. Pl & Pr Forms (Rev), Landlord and Tenant, Form 137 (order authorizing sale of tenant's perishables distrained to secure payment of rent).

CJS.

52 C.J.S., Landlord and Tenant §§ 1297, 1298.

§ 89-7-71. Form of bond for payment of rent.

The bond to be taken by the officer for the payment of the rent and supplies, or either, in three (3) months, may be in the following form, viz.:

"The State of Mississippi,
County of ________

"We, ________, principal, and ________ and ________, sureties, bind ourselves to pay ________ the sum of ________ [here insert double the sum claimed] dollars, unless, on or before the ________ day of ________, A.D. ________, the said ________ shall pay to the said ________ the sum of ________ dollars, being for rent and supplies due him from the said ________, the tenant on the land in said county, being [here describe the leased premises as in the writ], together with interest thereon to said date, and the costs of the attachment for the same, levied on the property of said tenant, and now restored to him by virtue of this bond.

"Witness our signatures, this ______ day of ______, A.D. ______.

"________________,
"________________,
"________________."

"The foregoing bond is approved by me, this ______ day of ______, A.D. ______.

"________________, Sheriff."

If the attachment be for rent not due, the bond for the payment thereof will vary in its terms to suit the case.

HISTORY: Codes, 1892, § 2509; 1906, § 2846; Hemingway's 1917, § 2344; 1930, § 2196; 1942, § 918.

JUDICIAL DECISIONS

1. In general.

The obligor is estopped by the bond from denying that the rent is owing. Tooley v. Culbertson, 6 Miss. 267, 1840 Miss. LEXIS 82 (Miss. 1840); Robinson v. White, 15 Miss. 39, 1846 Miss. LEXIS 114 (Miss. 1846).

§ 89-7-73. Bond delivered to lessor, and proceedings thereon.

The bond taken for the payment of rent or supplies shall be forthwith delivered to the landlord for whom the distress was made; and if the money be not paid according to the condition, any court having jurisdiction of the amount thereof shall, on motion, award execution against the obligors therein, the bond being filed in the court, and five (5) days' notice given of the motion.

HISTORY: Codes, Hutchinson's 1848, ch. 56, art. 5(3); 1857, ch. 41, art. 6; 1871, § 1625; 1880, § 1307; 1892, § 2510; 1906, § 2847; Hemingway's 1917, § 2345; 1930, § 2197; 1942, § 919.

Cross References — Provision that the state shall have all the liens, rights, and remedies accorded to landlords in this chapter, see § 29-1-107.

JUDICIAL DECISIONS

1. In general.

The proceeding by motion is a summary remedy, and must, therefore, conform to the statute in all material respects. Tifft v. Virden, 15 Miss. 91, 1846 Miss. LEXIS 123 (Miss. 1846).

The statute authorizing the judgment on motion is constitutional. Peck v. Critchlow, 8 Miss. 243, 1843 Miss. LEXIS 84 (Miss. 1843).

A bond made payable to the sheriff, and by him indorsed to the landlord, is valid. Tooley v. Culbertson, 6 Miss. 267, 1840 Miss. LEXIS 82 (Miss. 1840); Peck v. Critchlow, 8 Miss. 243, 1843 Miss. LEXIS 84 (Miss. 1843); Phillips v. Chaney, 8 Miss. 250, 1843 Miss. LEXIS 85 (Miss. 1843); Robinson v. White, 15 Miss. 39, 1846 Miss. LEXIS 114 (Miss. 1846).

§ 89-7-75. Remedy when claim not due in certain cases.

When any landlord or lessor shall have just cause to suspect, and shall verily believe, that his tenant will remove his agricultural products on which there is a lien, or any part thereof, from the leased premises to any other place before the expiration of his term, or before the rent or claim for supplies will fall due, or that he will remove his other effects, so that distress cannot be made, the landlord or lessor, in either case, on making oath thereof, and of the amount the tenant is to pay, and at what time the same will fall due, and giving bond, as required were the debt due, may, in like manner, obtain an attachment against the goods and chattels of such tenant; and the officer making the distress shall give notice thereof, and advertise the property distrained or seized for sale. If the tenant shall not, before the time appointed for sale, give bond, with sufficient sureties, in double the amount of the rent or other demand, payable to the plaintiff, conditioned for the payment of the sum due at the time it shall fall due, with costs, the goods distrained or seized, or so much thereof as may be necessary, shall be sold by the officer, at public sale, to the highest bidder, for cash, and out of the proceeds of the sale he shall pay the costs, and shall pay to the plaintiff the amount owing to him, deducting interest for the time until the same shall become due.

HISTORY: Codes, Hutchinson's 1848, ch. 56, art. 5(7); 1857, ch. 42, art. 3; 1871, § 1622; 1880, § 1304; 1892, § 2511; 1906, § 2848; Hemingway's 1917, § 2346; 1930, § 2198; 1942, § 920.

Cross References — Provision that the state shall have all the liens, rights, and remedies accorded to landlords in this chapter, see § 29-1-107.

Rights, obligations and remedies available under Sections 89-7-1 through 89-7-125 not altered or abridged by rights, obligations and remedies available under Chapter 8 of Title 89, see § 89-8-3.

JUDICIAL DECISIONS

1. In general.

The landlord must do what the law exacts as the foundation for his attachment; otherwise, the tenant may successfully replevy, and that, too, though the truth would have justified the landlord in proceeding in the prescribed way. Dudley v. Harvey, 59 Miss. 34, 1881 Miss. LEXIS 69 (Miss. 1881).

A mere belief that the tenant will remove effects other than agricultural products will not justify an attachment before the rent is due; The landlord must have "evidence of reasons and facts" upon which to base his belief. Briscoe v. McElween, 43 Miss. 556, 1870 Miss. LEXIS 66 (Miss. 1870).

It is not every contemplated removal of effects on which there is no lien that will warrant an attachment; It must be a removal of such effects that would defeat a distress for rent. Stamps v. Gilman & Co., 43 Miss. 456, 1870 Miss. LEXIS 55 (Miss. 1870).

RESEARCH REFERENCES

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant § 599.

16 Am. Jur. Pl & Pr Forms, (Rev), Landlord and Tenant, Form 138 (replevy bond by tenant to secure release of distrained personalty).

§ 89-7-77. Goods removed before debt due, distrained.

When any tenant shall have actually removed his effects, other than the agricultural products, upon which there is a lien, from the leased premises before the rent or demand for supplies has become due, so that there be no sufficient property liable to distress or seizure left on the premises, the landlord may in like manner obtain an attachment at any time after such removal or within thirty (30) days after such rent or other claim becomes due, and may levy the same on the effects so removed wherever they may be found and like proceedings shall be had thereon as in other cases. And if any tenant shall remove his agricultural products upon which there is a lien from the leased premises, the landlord may at any time have the same seized wherever they may be found, and like proceedings shall be had thereon as in other cases.

HISTORY: Codes, Hutchinson's 1848, ch. 56, art. 5(8); 1857, ch. 41, art. 4; 1871, § 1623; 1880, § 1305; 1892, § 2512; 1906, § 2849; Hemingway's 1917, § 2347; 1930, § 2199; 1942, § 921.

Cross References — Provision that the state shall have all the liens, rights, and remedies accorded to landlords in this chapter, see § 29-1-107.

JUDICIAL DECISIONS

1. In general.

The attachment under this statute may be issued by a justice of the peace of a county other than the one where the leased premises are situated. Honea v. Page, 60 Miss. 248, 1882 Miss. LEXIS 41 (Miss. 1882).

A landlord has no lien upon his tenant's goods other than agricultural products, and before distress for rent a bona fide purchaser of such goods, whether on or off the leased premises, will be protected. Honea v. Page, 60 Miss. 248, 1882 Miss. LEXIS 41 (Miss. 1882).

RESEARCH REFERENCES

ALR.

Valuation of corporate stock for purposes of succession, inheritance, or estate tax, as affected by quantity involved. 23 A.L.R.2d 775.

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant §§ 615 et seq.

§ 89-7-79. Goods removed, seized within thirty days.

If any tenant shall at any time convey or carry off from the demised premises, his goods or chattels, leaving the rent, or any part thereof, or the sum owing for supplies, unpaid, the landlord or lessor, or his assigns, may, within thirty (30) days next after such conveying away or carrying off such goods or chattels, cause the same to be taken and seized wherever found, and the same to sell in like manner as if they had been distrained in or upon the demised premises. But goods or chattels, other than the agricultural products upon which there is a lien, so carried off and sold in good faith for a valuable consideration before seizure made, shall not be afterwards liable to be taken and seized for rent or supplies.

HISTORY: Codes, Hutchinson's 1848, ch. 56, art. 5(12); 1857, ch. 41, art. 5; 1871, § 1624; 1880, § 1306; 1892, § 2513; 1906, § 2850; Hemingway's 1917, § 2348; 1930, § 2200; 1942, § 922.

Cross References — Provision that the state shall have all the liens, rights, and remedies accorded to landlords in this chapter, see § 29-1-107.

JUDICIAL DECISIONS

1. In general.

Claimant of trucks which were attached was required to show that they were bought in good faith for valuable consideration before levy was made. Rollings v. Rosenbaum, 166 Miss. 499, 148 So. 384, 1933 Miss. LEXIS 390 (Miss. 1933).

Landlord had no lien upon trucks which he attached and which were sold by tenant to his wife prior to attachment. Rollings v. Rosenbaum, 166 Miss. 499, 148 So. 384, 1933 Miss. LEXIS 390 (Miss. 1933).

Tenant's wife who showed deed of sale to her reciting valid consideration for tenant's trucks attached by landlord, having made prima facie case, landlord had burden to establish fraud or other defense. Rollings v. Rosenbaum, 166 Miss. 499, 148 So. 384, 1933 Miss. LEXIS 390 (Miss. 1933).

Property removed from leased premises remains subject to landlord's lien for rent for thirty days after removal unless sold to bona fide purchaser before seizure. Durant Motor Co. v. Simpson, 160 Miss. 313, 133 So. 672, 1931 Miss. LEXIS 170 (Miss. 1931).

A landlord has no lien upon his tenant's goods other than agricultural products, and before distress for rent a bona fide purchaser of such goods, whether on or off the premises, will be protected. Richardson v. McLaurin, 69 Miss. 70, 12 So. 264, 1891 Miss. LEXIS 104 (Miss. 1891).

It is not necessary, to authorize the seizure under this statute, for the affidavit to aver the removal. Henry v. Davis, 60 Miss. 212, 1882 Miss. LEXIS 33 (Miss. 1882).

§ 89-7-81. Distress may be made after termination of lease.

Any person, or his executor, administrator, or assigns having rent in arrear upon any lease for life, years, or otherwise, ended and determined, or a claim for supplies, may distrain for such arrears, after the termination of the lease, in the same manner as if the same had not been determined; but the distress must be made within six (6) months after the termination of the lease, and during the continuance of the landlord's title or interest, and during the possession of the tenant from whom the arrears are due.

HISTORY: Codes, Hutchinson's 1848, ch. 56, art. 5(14); 1857, ch. 41, art. 7; 1871, § 1626; 1880, § 1308; 1892, § 2514; 1906, § 2852; Hemingway's 1917, § 2350; 1930, § 2201; 1942, § 923.

Cross References — Provision that the state shall have all the liens, rights, and remedies accorded to landlords in this chapter, see § 29-1-107.

JUDICIAL DECISIONS

1. In general.

The property attached must be the property of the party against whom the writ is directed, or it must be liable for the rent due from him. Patty v. Bogle, 59 Miss. 491, 1882 Miss. LEXIS 141 (Miss. 1882).

RESEARCH REFERENCES

ALR.

Time for exercise of lessee's option to terminate lease. 37 A.L.R.2d 1173.

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant § 613.

CJS.

52 C.J.S., Landlord and Tenant §§ 1280, 1315.

§ 89-7-83. Sale of goods stopped without bond.

If the tenant shall make affidavit, before the officer holding his property under an attachment for rent or supplies alleged to be due or to become due, that he does not or will not owe the amount claimed, such officer shall not sell the property, unless it be liable to perish or greatly depreciate, or be expensive to keep, in which case he shall sell it and hold the proceeds to the end of the suit; and he shall return the attachment with the affidavit and a statement of his proceedings to the proper court, and shall summon the party who sued out the attachment to appear there; and further proceedings shall be had as if the tenant had replevied the goods by giving bond.

HISTORY: Codes, 1880, § 1316; 1892, § 2528; 1906, § 2866; Hemingway's 1917, § 2364; 1930, § 2202; 1942, § 924.

Cross References — Provision that the state shall have all the liens, rights, and remedies accorded to landlords in this chapter, see § 29-1-107.

RESEARCH REFERENCES

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant § 616.

16 Am. Jur. Pl & Pr Forms (Rev), Landlord and Tenant, Form 136 (motion by landlord for order authorizing sale of tenant's perishables distrained as security for rent).

CJS.

52 C.J.S., Landlord and Tenant § 1298.

§ 89-7-85. Distress to be reasonable, and property seized not to be removed from county.

It shall not be lawful for any officer who may execute an attachment for rent or supplies to remove the property distrained or seized out of the county where the distress or seizure was made; and if any officer or other person shall so remove any property distrained or seized, he shall pay to the party aggrieved double the value of the property removed, to be recovered in an action. And, moreover, distresses and seizures shall in all cases be reasonable and not too great; and any officer who shall make an unreasonable distress or seizure, under color of law, shall be liable to the party aggrieved for double damages.

HISTORY: Codes, Hutchinson's 1848, ch. 56, art. 5(23); 1857, ch. 41, art. 8; 1871, § 1627; 1880, § 1309; 1892, § 2515; 1906, § 2853; Hemingway's 1917, § 2351; 1930, § 2203; 1942, § 925.

Cross References — Tenant's remedy for wrongful distress, see § 89-7-115.

RESEARCH REFERENCES

Am. Jur.
49 Am. Jur. 2d, Landlord and Tenant §§ 593, 642.

CJS.
52 C.J.S., Landlord and Tenant § 1317-1321.

§ 89-7-87. Irregularities not to affect distress.

When any distress or seizure shall be made for rent or supplies justly due, and any irregularity or unlawful act shall afterwards be done by the officer distraining or seizing, the distress or seizure shall not, for that reason, be unlawful, nor the officer making or seizing it, or the party at whose instance the writ was issued, become a trespasser from the beginning, but the party aggrieved by such irregularity or unlawful act, may recover the special damage he may have sustained thereby. However, an action shall not be sustained if tender of amends be made by the party distraining before suit is brought.

HISTORY: Codes, 1880, § 1310; 1892, § 2516; 1906, § 2854; Hemingway's 1917, § 2352; 1930, § 2204; 1942, § 926.

JUDICIAL DECISIONS

1. In general.
The common-law right of a landlord to distrain is abrogated. Proceedings must be in accordance with the statute. There has been no relaxation of the strictness required in the observance of the law authorizing the procedure. The landlord must see that the affidavit, bond and writ conform to the law. Dudley v. Harvey, 59 Miss. 34, 1881 Miss. LEXIS 69 (Miss. 1881).

§ 89-7-89. How goods replevied.

The tenant, his executor or administrator, may replevy the agricultural products or other property distrained, at any time before the sale thereof, by giving bond with one or more sufficient sureties, to be approved by the officer in whose custody the property may be, payable to the party in whose name or right the distress or seizure was made, in a penalty double the amount distrained for or double the value of the property seized, where the value is less than the amount distrained for, conditioned to prosecute his suit against the obligee in the bond for the property, and to perform the judgment of the court in such suit, in case he shall fail therein. Upon the delivery of such bond to the officer having control of the property, he shall deliver the same to the party giving the bond, and shall return the bond and the writ of attachment, with a statement of his proceedings, to the clerk of the circuit court if the value of the property or amount distrained for exceed Two Hundred Dollars ($200.00), and to the justice of the peace who issued the attachment if neither the amount claimed nor the value of the property exceed Two Hundred Dollars ($200.00); and he shall summon the party in whose name or right the distress or seizure was made, to appear at the next term of the court to which return of the attachment and bond shall be made, to answer the suit of the person replevying the property; and the officer shall make his return of having summoned such party on the papers by him returned to the court.

HISTORY: Codes, Hutchinson's 1848, ch. 56, art. 5 (15); 1857, ch. 41, art. 11; 1871, § 1630; 1880, § 1312; 1892, § 2518; 1906, § 2856; Hemingway's 1917, § 2354; 1930, § 2205; 1942, § 927.

Editor's Notes — Pursuant to Miss. Const. Art. 6, Section 171, all references in the Mississippi Code to "justice of the peace" shall mean justice court judge.

Cross References — Provision that the state shall have all the liens, rights, and remedies accorded to landlords in this chapter, see § 29-1-107.

JUDICIAL DECISIONS

1. In general.

Evidence sustained finding that new oral contract under which tenant was to pay what he could as reasonable rent for possession of land had replaced written contract, and verdict that landlord's attachment for rent was wrongfully sued out. Graham v. Swinney, 174 Miss. 579, 165 So. 438, 1936 Miss. LEXIS 208 (Miss. 1936).

Defendant landlord without counter affidavit may disprove account sworn to with plaintiff tenant's declaration for property attached by landlord. Sprouse v. Davis, 141 Miss. 564, 106 So. 824, 1926 Miss. LEXIS 462 (Miss. 1926).

Proceedings in attachment of agricultural products for rent becomes a suit for first time when tenant replevied property. Thornton v. Gardner, 134 Miss. 485, 99 So. 131, 1924 Miss. LEXIS 285 (Miss. 1924).

The circuit court to which the return should be made is the circuit court of the county of which the justice of the peace who issued the attachment is an officer. Hauser v. Robbins, 61 Miss. 551, 1884 Miss. LEXIS 128 (Miss. 1884).

This is true whether the property be found on the leased premises or not. Kendrick v. Watkins, 54 Miss. 495, 1877 Miss. LEXIS 33 (Miss. 1877).

The ordinary action of replevin does not apply. Maxey v. White, 53 Miss. 80, 1876 Miss. LEXIS 39 (Miss. 1876).

A separate suit cannot be maintained on the bond. It can by put in judgment in the replevin suit only. McKinney v. Green, 52 Miss. 70, 1876 Miss. LEXIS 165 (Miss. 1876).

The replevin is the beginning of the suit. Towns v. Boarman, 23 Miss. 186, 1851 Miss. LEXIS 34 (Miss. 1851).

RESEARCH REFERENCES

Am. Jur.
49 Am. Jur. 2d, Landlord and Tenant § 594.
16 Am. Jur. Pl & Pr Forms (Rev), Landlord and Tenant, Form 138 (replevy bond by tenant to secure release of distrained personalty).

CJS.
52 C.J.S., Landlord and Tenant, §§ 1317-1321.

§ 89-7-91. Summons or publication for party distraining.

In case of failure to summon in the first instance the party in whose name or right the distress was made, a summons may be issued for him by the clerk of the circuit court or justice of the peace; and if he cannot be found, publication may be made as in attachment cases.

HISTORY: Codes, 1880, § 1313; 1892, § 2520; 1906, § 2858; Hemingway's 1917, § 2356; 1930, § 2206; 1942, § 928.

Cross References — Publication of notice of attachment, see §§ 11-33-37 et seq.

§ 89-7-93. Form of replevin-bond.

The tenant's replevin-bond, or that of a claimant, may be in the following form, viz.:

"We, ________, principal, and ________ and ________, sureties, bind ourselves to pay ________ the sum of ________ dollars [double the value of the goods and chattels, if that be less than the rent claimed], unless the said ________ shall prosecute his suit against the said ________ for certain goods and chattels, to wit: Eight bales of cotton [or whatever is distrained], distrained for rent [or supplies, or both, as the case may be] by virtue of an attachment in favor of ________ against ________, issued by ________, a justice of the peace of ________ County, and now here restored to the said ________, and shall perform the judgment of the court in such suit in case he shall fail therein.

"Witness our hands, the ________ day of ________, A.D. ________.

"________________,
"________________,
"________________."

"I approve the foregoing bond, this ________ day of ________, A.D. ________.

"________________"

HISTORY: Codes, 1880, § 1353; 1892, § 2519; 1906, § 2857; Hemingway's 1917, § 2355; 1930, § 2207; 1942, § 929.

RESEARCH REFERENCES

Am. Jur.
16 Am. Jur. Pl & Pr Forms (Rev), Landlord and Tenant, Form 138 (replevy bond by tenant to secure release of distrained

personalty).

§ 89-7-95. Party replevying to propound claim.

By the first day of the next term of the court to which such replevy-bond and attachment shall have been returned, or afterwards, if longer time be granted by the court, the party who replevied the property shall file either a motion to quash the attachment proceedings or his declaration in replevin, if in the circuit court, or appear and prosecute his claim, if in a justice's court, against the party in whose name or right the distress or seizure was made. Such party shall make defense, and if the attachment proceeding be quashed it may be amended. A tenant may file his declaration after a motion to quash shall have been denied, and the cause shall proceed to an issue and trial; and if upon trial it be found that the sum for rent or supplies was due, in whole or part, and that the distress was lawfully made, the landlord shall have judgment against the obligors in the replevy-bond for a return of the property replevied, or its value, to an amount sufficient to pay the sum found due, with interest and costs of suit. If the property replevied be restored, it shall be sold to satisfy the judgment, and if it be not sufficient, execution shall go against the party replevying for the residue.

HISTORY: Codes, 1880, § 1314; 1892, § 2521; 1906, § 2859; Hemingway's 1917, § 2357; 1930, § 2208; 1942, § 930.

JUDICIAL DECISIONS

1. In general.

That tenant bringing replevin for farm products seized under distress for rent failed to plead Sunday statute, held not reversible error, where landlord made no objection to evidence lease was executed on Sunday. Stamps v. Frost, 174 Miss. 325, 164 So. 584, 1935 Miss. LEXIS 84 (Miss. 1935).

Error to disallow amendment of affidavit for attachment; writ having been quashed. McSwain v. Cephus, 109 Miss. 368, 69 So. 178, 1915 Miss. LEXIS 166 (Miss. 1915).

By virtue of this section [Code 1942, § 930] the proceedings in a landlord's attachment for rent or supplies may be amended. Schlicht v. Callicott, 76 Miss. 487, 24 So. 869, 1898 Miss. LEXIS 102 (Miss. 1898).

In replevin by a tenant, where there is a controversy as to the amount of rent due, a general verdict for the landlord, without finding the sum due as required by this section, is insufficient, and the jury having dispersed, the case must be treated as if a mistrial had occurred. Gilleylen v. Stewart, 72 Miss. 262, 16 So. 495, 1894 Miss. LEXIS 99 (Miss. 1894).

§ 89-7-97. Form of declaration.

The declaration in replevin in such case may be substantially in the following form, to wit:

"State of Mississippi.

Circuit court, ________ term, A.D. ________

County of ________

"Thomas East, the plaintiff in this case, complains of William West, the defendant, in an action of replevin.

"For that heretofore, to wit: on the _______ day of _______, A.D. _______, the said defendant wrongfully caused an officer of _______ County to seize and take from the plaintiff's possession, under an attachment for rent [or rent and supplies, or for supplies, as the case may be], certain personal property of the plaintiff's, to wit: here describe the property and give the value of each separate item of it.

"And the plaintiff avers that he is entitled to recover the same and also to recover of defendant the sum of _______ dollars damages for the said wrongful taking; wherefore, he sues and demands judgment accordingly, and costs of suit."

HISTORY: Codes, 1892, § 2522; 1906, § 2860; Hemingway's 1917, § 2358; 1930, § 2209; 1942, § 931.

JUDICIAL DECISIONS

1. In general.

Evidence sustained finding tenant's oral contract had replaced written contract, and that landlord's attachment for rent was wrongfully sued out. Graham v. Swinney, 174 Miss. 579, 165 So. 438, 1936 Miss. LEXIS 208 (Miss. 1936).

That tenants bringing replevin for farm products seized under distress for rent failed to plead Sunday statute held not reversible error, where landlord made no objection to evidence that lease was executed on Sunday. Stamps v. Frost, 174 Miss. 325, 164 So. 584, 1935 Miss. LEXIS 84 (Miss. 1935).

Judgment for lessee against lessor for amount by which total of sums agreed to be deducted from monthly rent and paid lessor's creditor by lessee exceeded rent for period before partial destruction of leased mill by fire will not be affirmed on remittitur of amount exceeding sums deductible for such period only, but must be reversed and cause remanded for entry of judgment in proper amount. Moore-Curry Lumber Co. v. Wogan, 170 Miss. 512, 155 So. 329, 1934 Miss. LEXIS 162 (Miss. 1934).

Person incurring attorney's fees in bringing suit for damages for attachment for rent is entitled to recover therefor. Wigginton v. Moore, 147 Miss. 169, 113 So. 326, 1927 Miss. LEXIS 346 (Miss. 1927).

§ 89-7-99. Pleas to the declaration.

The only pleas to a declaration in replevin shall be either, first, a denial that the goods were seized on demand or at the plaint of the defendant; or, second, an avowry that they were rightfully seized for rent or supplies, or both, due and in arrear, or to become due. The two pleas can only be pleaded together when each is to only a part of the declaration and relates to separate portions of the property. The first of said pleas shall be substantially to the following effect, to wit:

"Thomas East
v. Circuit court, _______ County.
William West.

"Now comes the defendant, William West, and for plea to plaintiff's declaration, says: It is not true that he caused an officer of ________ County to seize and take from plaintiff, Thomas East, under an attachment for rent, the possession of the property, or any part of it, described in the said declaration; and of this the defendant puts himself upon the country."

On the trial of this plea the burden of proof shall be on the plaintiff.

HISTORY: Codes, 1892, § 2523; 1906, § 2861; Hemingway's 1917, § 2359; 1930, § 2210; 1942, § 932.

RESEARCH REFERENCES

Am. Jur.
49 Am. Jur. 2d, Landlord and Tenant
§ 617.

§ 89-7-101. The avowry.

The avowry shall be substantially to the following effect, to wit:

"Thomas East
v. Circuit court, ________ County.
William West.

"And now comes the defendant, William West, and for plea to plaintiff's declaration he says: True it is that he caused the property described in the plaintiff's declaration to be seized; but the seizure was not wrongful, because he says that before the said seizure defendant was the plaintiff's landlord; that he, the defendant, as landlord, leased to the plaintiff, as tenant, certain premises in said county, to wit: [here describe the leased premises] for the term beginning on the ________ day of ________, A.D. ________, and ending on the ________ day of ________, A.D. ________; that at the time of the said seizure the plaintiff, as tenant, was indebted to defendant, as landlord, in the sum of ________ dollars, for rent of said premises and for supplies furnished his said tenant by this defendant [or for rent alone or supplies alone, as the case may be]. An itemized account or statement of said indebtedness is herewith filed [or the note or writing evidencing said debt, as the case may be], and the said debt became due on the ________ day of ________, A.D. ________, and the said seizure was made to satisfy the sum so due; and this the defendant is ready to verify."

If the avowry be for a sum to become due, strike out from the form all after the last parenthesis, and insert in lieu thereof the following, viz.: "Which said indebtedness will become due on the ________ day of ________, A.D. ________, and defendant had just cause to suspect, and verily believed, that the plaintiff would remove his effects, or some part of the agricultural products raised thereon, from the leased premises before the expiration of his term, or before the said debt would become due, so that distress could not be made, and the said seizure was made to satisfy the said sum. This the defendant is ready to verify."

HISTORY: Codes, 1892, § 2524; 1906, § 2862; Hemingway's 1917, § 2360; 1930, § 2211; 1942, § 933.

JUDICIAL DECISIONS

1. In general.

Evidence sustained finding tenant's oral contract had replaced written contract, and that landlord's attachment for rent was wrongfully sued out. Graham v. Swinney, 174 Miss. 579, 165 So. 438, 1936 Miss. LEXIS 208 (Miss. 1936).

It is error to enter judgment by default in replevin without disposing of avowry filed. Barlow v. Serio, 129 Miss. 875, 93 So. 356, 1922 Miss. LEXIS 95 (Miss. 1922).

RESEARCH REFERENCES

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant § 617.

§ 89-7-103. The replication.

If the avowry be for rent and supplies, or either, claimed to be due and in arrears, the replication by the plaintiff shall be substantially in the following form, viz.:

"Thomas East
v. Circuit court, ________ County.
William West.

"And the plaintiff, for replication, says he was not indebted to the defendant as stated in his said avowry; and of this the plaintiff puts himself upon the country."

HISTORY: Codes, 1892, § 2525; 1906, § 2863; Hemingway's 1917, § 2361; 1930, § 2212; 1942, § 934.

JUDICIAL DECISIONS

1. In general.

Where claimant replevies property attached for rent, his replication to landlord's avowry should not literally follow form given in this section [Code 1942, § 934] and deny indebtedness; but issue of ownership should be presented and evidence thereon admitted. Wright v. Craig, 92 Miss. 218, 45 So. 835, 1908 Miss. LEXIS 180 (Miss. 1908).

§ 89-7-105. Replication in case rent not due.

If the avowry be a claim for rent or supplies, or both, to become due, the plaintiff shall reply either that he was not indebted, as in the form last above, or he may reply in substance as in the following form, viz.:

"Thomas East
v. Circuit court, ________ County.
William West.

"And the plaintiff, for replication, says that the defendant did not have just cause to suspect and verily believe that the plaintiff would remove his effects, or some part of the agricultural products raised thereon, from the leased premises before the expiration of his term or before the said debt would become due, so that distress could not be made; and of this plaintiff puts himself upon the country."

The plaintiff may, in proper case, unite the said replications, or he may reply any other facts constituting a legal answer.

And on the trial of an issue on an avowry, the burden of proof shall be on the avowant, the landlord, and he shall have the right to open and conclude the argument.

HISTORY: Codes, 1892, § 2526; 1906, § 2864; Hemingway's 1917, § 2362; 1930, § 2213; 1942, § 935.

JUDICIAL DECISIONS

1. In general.

Tenant replevying goods attached by landlord for supplies furnished, failing to allege that crop for which supplies furnished was not grown on leased land, could not object that landlord's evidence did not show where crop grown. McRae v. Browning, 119 Miss. 427, 81 So. 123, 1919 Miss. LEXIS 20 (Miss. 1919).

If issue tendered denying allegation of avowry, burden is on landlord or avowant; if relation of landlord and tenant, amount of contract, or amount of supplies furnished is denied, landlord must prove contention, but if admitted no issue is made on avowry; if plaintiff undertake to confess and avoid by affirmative plea setting up new matter, and issue is tendered thereon, burden shifts and plaintiffs assuming it have right to open and close. McNeer & Dodd v. Norfleet, 113 Miss. 611, 74 So. 577, 1917 Miss. LEXIS 138 (Miss. 1917).

§ 89-7-107. Replevin; when triable, and judgment upon default.

Suits by the tenant or a third person replevying the property, shall be triable at the first term of the court; and in either case, if the party replevying shall make default or fail to prosecute his suit, like judgment shall be entered against him and the sureties on the bond as upon an issue found against him on trial, and a new replevin or writ of second deliverance shall not be allowed.

HISTORY: Codes, Hutchinson's 1848, ch. 56, art. 5 (17); 1857, ch. 41, art. 13; 1871, § 1632; 1880, § 1320; 1892, § 2535; 1906, § 2873; Hemingway's 1917, § 2371; 1930, § 2214; 1942, § 936.

JUDICIAL DECISIONS

1. In general.

The landlord, as against a claimant as well as against the tenant, must avow and prove the rent due, etc. Lavigne v. Russ, 36 Miss. 326, 1858 Miss. LEXIS 101 (Miss. 1858); Maxey v. White, 53 Miss. 80, 1876 Miss. LEXIS 39 (Miss. 1876).

The tenant or claimant is the plaintiff, and must prosecute the suit. Parkhurst v. Dunlap, 7 Miss. 577, 1842 Miss. LEXIS 76 (Miss. 1842).

§ 89-7-109. Suit revived in case of death of party.

If either party to such replevin or other action growing out of an attachment for rent or supplies, die pending the same, the suit may be revived for or against the representatives of the deceased party as other actions that survive may be revived.

HISTORY: Codes, 1857, ch. 41, art. 25; 1871, § 1644; 1880, § 1321; 1892, § 2536; 1906, § 2874; Hemingway's 1917, § 2372; 1930, § 2215; 1942, § 937.

Cross References — Survival of actions generally, see §§ 91-7-233 et seq.

§ 89-7-111. Judgment if trial results against lessor.

If the trial of suit result in favor of the party replevying the property, the judgment shall be that he retain it, and recover of the party in whose name or right such distress was sued out damages for the wrongful suing out of the attachment. Thereupon scire facias may be issued to the sureties on the attachment-bond to appear at the next term of the court to show cause against a judgment being given against them for the amount of the judgment for damages against their principal, not to exceed the penalty of their bond; and if cause be not affirmatively shown, judgment shall be rendered against them.

HISTORY: Codes, 1880, § 1315; 1892, § 2527; 1906, § 2864; Hemingway's 1917, § 2363; 1930, § 2216; 1942, § 938.

JUDICIAL DECISIONS

1. In general.

Tenant's wife who sought to replevy trucks wrongfully attached by landlord was entitled to reasonable attorney's fees, if prevailing. Rollings v. Rosenbaum, 166 Miss. 499, 148 So. 384, 1933 Miss. LEXIS 390 (Miss. 1933).

Stranger claimant is entitled to reasonable damages for wrongful attachment under same circumstances as tenant is entitled under statute. Rollings v. Rosenbaum, 166 Miss. 499, 148 So. 384, 1933 Miss. LEXIS 390 (Miss. 1933).

The tenant is confined to the remedy provided in the section [Code 1942, § 938], except where rent is falsely claimed when nothing was due. Kyzer v. Middleton, 61 Miss. 360, 1883 Miss. LEXIS 137 (Miss. 1883).

§ 89-7-113. Papers transferred, if returned to wrong court.

If the papers, in case of a replevin of property, be returned to the wrong court, they shall be transferred to the proper court, and the case be there proceeded with as if they had been returned to that court in the first instance.

HISTORY: Codes, 1880, § 1319; 1892, § 2534; 1906, § 2872; Hemingway's 1917, § 2370; 1930, § 2217; 1942, § 939.

§ 89-7-115. Tenant's remedy against landlord.

If any distress or seizure and sale be made under color of law for rent or supplies pretended to be due and in arrear, where, in truth, no rent or sum for supplies is due or owing to the party causing the distress or seizure to be made, then the owner of the agricultural products or other property so taken and sold, his executor or administrator, shall have remedy by action against the person in whose name or right such property was taken, his executor or administrator, and shall recover double the value of the property, with costs, or may put the bond of the plaintiff in suit to recover damages for the wrongful suing out of the writ, and shall recover therein double the value of the property, if the penalty of the bond amount to so much.

HISTORY: Codes, Hutchinson's 1848, ch. 56, art. 5 (5); 1857, ch. 41, art. 10; 1871, § 1629; 1880, § 1311; 1892, § 2517; 1906, § 2855; Hemingway's 1917, § 2353; 1930, § 2218; 1942, § 940.

Cross References — Rights, obligations and remedies available under Sections 89-7-1 through 89-7-125 not altered or abridged by rights, obligations and remedies available under Chapter 8 of Title 89, see § 89-8-3.

JUDICIAL DECISIONS

1. In general.

Proper elements of damages for wrongful suing out injunction to prevent tenant from removing building are attorney's fees, costs, expenses of trial, depreciation, and reasonable rental value. Waldauer v. Parks, 141 Miss. 617, 106 So. 881, 1926 Miss. LEXIS 467 (Miss. 1926).

This section [Code 1942, § 940] applies only where property sold under attachment and seizure and not where replevied by tenant. Thornton v. Gardner, 134 Miss. 485, 99 So. 131, 1924 Miss. LEXIS 285 (Miss. 1924).

Tenant replevying goods attached by landlord for supplies furnished, failing to allege that crops for which supplies furnished not grown on leased land, could not object that landlord's evidence did not show where crop grown. McRae v. Browning, 119 Miss. 427, 81 So. 123, 1919 Miss. LEXIS 20 (Miss. 1919).

Tenant may recover on the attachment bond for the actual damages sustained. Hawkins v. James, 69 Miss. 361, 11 So. 654, 1891 Miss. LEXIS 99 (Miss. 1891).

A tenant cannot recover double damages for an alleged wrongful distress by the landlord if the attachment proceedings, though based upon an affidavit and bond, appropriate to a distress, proceed thereafter as an ordinary attachment against the debtor, and were so treated by both parties. Hawkins v. James, 69 Miss. 361, 11 So. 654, 1891 Miss. LEXIS 99 (Miss. 1891).

It is only where the landlord falsely pretends that something is due that the tenant can recover the double damages. Kyzer v. Middleton, 61 Miss. 360, 1883 Miss. LEXIS 137 (Miss. 1883).

There is no privity of contract between the lessor and the assignee of the term from the lessee; and the property of such assignee cannot be taken if the attachment be sued out against him by the lessor. Patty v. Bogle, 59 Miss. 491, 1882 Miss. LEXIS 141 (Miss. 1882).

RESEARCH REFERENCES

ALR.

Landlord and tenant: respective rights in excess rent when landlord relets at higher rent during lessee's term. 50 A.L.R.4th 403.

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant §§ 593, 642.

32 Am. Jur. Proof of Facts 2d 659, Landlord's Conversion of Tenant's Property.

42 Am. Jur. Proof of Facts 2d 317, Constructive Eviction by Conduct of Other Tenant.

46 Am. Jur. Proof of Facts 2d 429, Intentional Infliction of Emotional Distress by Landlord.

50 Am. Jur. Proof of Facts 2d 519, Lessee's Excusable Failure to give Timely Notice Exercising Option to Renew Lease.

3 Am. Jur. Proof of Facts 3d 581, Sexual Harassment by Landlord.

CJS.

52 C.J.S., Landlord and Tenant §§ 1317-1321.

§ 89-7-117. Property of strangers not liable.

Property, except agricultural products on which there is a lien for rent, found or being on any demised premises, not belonging to the tenant or to some person bound or liable for the rent of such premises, shall not be liable to be distrained for rent; but if the tenant or other person liable for the rent have a limited interest in the property, the same may be distrained, and the interest therein of the tenant or person liable for the rent may be sold.

HISTORY: Codes, Hutchinson's 1848, ch. 56, art. 5 (10); 1857, ch. 41, art. 12; 1871, § 1631; 1880, § 1317; 1892, § 2529; 1906, § 2867; Hemingway's 1917, § 2365; 1930, § 2219; 1942, § 941.

Cross References — Trial of right to property levied upon, see §§ 11-23-7 et seq.

RESEARCH REFERENCES

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant §§ 607 et seq.

32 Am. Jur. Proof of Facts 2d 659, Landlord's Conversion of Tenant's Property.

§ 89-7-119. Replevin of property by strangers.

When any person other than the tenant shall claim to be the owner of any property distrained or seized for rent or supplies, he may make affidavit that said property is his, and not the property of the tenant, and not held to the use of the tenant in any manner whatever, and is not liable to such distress or seizure. If he desire immediate possession of said property, he shall give bond, with sufficient sureties, in the manner directed for the tenant, and such affidavit and bond shall be delivered to the officer who made the distress, who shall deliver the property to the claimant. Such claim may be interposed without giving bond, and the same proceedings shall be had thereon, except that the property claimed shall not be delivered to the claimant, but shall be disposed of as in the case of replevy by the tenant. Upon such claim being made, the landlord may release the property so claimed and forthwith distrain or seize other property in lieu thereof.

HISTORY: Codes, Hutchinson's 1848, ch. 56, art. 5 (10, 16); 1857, ch. 41, art. 12; 1871, § 1631; 1880, § 1317; 1892, § 2530; 1906, § 2868; Hemingway's 1917, § 2366; 1930, § 2220; 1942, § 942.

Cross References — Trial of right to property levied upon, see §§ 11-23-7 et seq.

JUDICIAL DECISIONS

1. In general.

Stranger claimant is entitled to reasonable damages for wrongful attachment under same circumstances as tenant, under statute. Rollings v. Rosenbaum, 166 Miss. 499, 148 So. 384, 1933 Miss. LEXIS 390 (Miss. 1933).

Burden of proving ownership on party filing affidavit for property attached by landlord; prima facie case made out by proof of ownership, and burden shifts to landlord to show that it is subject to lien for rent. Dunn v. Hart, 120 Miss. 132, 81 So. 795, 1919 Miss. LEXIS 71 (Miss. 1919).

Third party owning property on leased premises, distrained for rent, may recover by remedy provided in this section [Code 1942, § 942] or by any other remedy known to law, as by replevin. Shuler v. L. Grunewald Co., 113 Miss. 763, 74 So. 659, 1917 Miss. LEXIS 151 (Miss. 1917).

A claimant of goods attached for rent is to be treated in the interposition of his claim as a plaintiff in replevin and must give attention to the prosecution of the suit without notification thereunto. Pierce v. Watkins, 74 Miss. 394, 21 So. 148, 1896 Miss. LEXIS 155 (Miss. 1896).

Where property levied upon under attachment for rent is claimed by a third person who files an affidavit without giving bond, the officer has no authority to sell it pending the suit unless the same consists of "live stock or chattels, which it is expensive to keep, or perishable articles." Weis v. Basket, 71 Miss. 771, 15 So. 659, 1894 Miss. LEXIS 49 (Miss. 1894).

Cotton ginned and in bales is not of the class that may be sold. Weis v. Basket, 71 Miss. 771, 15 So. 659, 1894 Miss. LEXIS 49 (Miss. 1894).

RESEARCH REFERENCES

Am. Jur.

32 Am. Jur. Proof of Facts 2d 659, Landlord's Conversion of Tenant's Property.

§ 89-7-121. Form of affidavit by third person.

The affidavit by a third person claiming property distrained or seized for rent or supplies may be in the following form, to wit:

"State of Mississippi,
________ County.

"Before me, ________, a justice of the peace of the said county, ________ makes oath that certain property to wit: eight bales of cotton [or whatever the property may be], distrained for rent by ________, a constable of said county, by virtue of an attachment for rent in favor of ________ against ________, are the property of affiant and not the property of ________, nor held in trust for his use, in any manner whatsoever; and are not liable to such distress.

"Sworn to and subscribed before me, the ________ day of ________, A.D.

"__________________, J.P."

HISTORY: Codes, 1892, § 2532; 1906, § 2870; Hemingway's 1917, § 2368; 1930, § 2221; 1942, § 943.

§ 89-7-123. Proceedings to be as in replevin by tenant.

The affidavit may be made before the officer having the property, and he shall make return of it and of the bond, if any, and the attachment papers, and summon the other party, as required in case of a replevin by the tenant; and the claimant replevying the property shall prosecute his suit against the party in whose name or right it was attached, in all respects as the tenant is required to do; and the pleadings and proceedings shall be conformed so as to present the proper issues.

HISTORY: Codes, 1857, ch. 41, art. 12; 1871, § 1631; 1880, § 1318; 1892, § 2533; 1906, § 2871; Hemingway's 1917, § 2360; 1930, § 2222; 1942, § 944.

JUDICIAL DECISIONS

1. In general.

Stranger claimant is entitled to reasonable damages for wrongful attachment under same circumstances as tenant, under statute. Rollings v. Rosenbaum, 166 Miss. 499, 148 So. 384, 1933 Miss. LEXIS 390 (Miss. 1933).

§ 89-7-125. Burden of proof.

On the trial of the issue between the landlord and such claimant, the burden of proof to show ownership in the property shall be on the claimant.

HISTORY: Codes, 1892, § 2531; 1906, § 2869; Hemingway's 1917, § 2367; 1930, § 2223; 1942, § 945.

JUDICIAL DECISIONS

1. In general.

Burden of proving ownership on party filing affidavit under Code 1906, § 2868 [Code 1942, § 942]; prima facie case made out by proof of ownership, and burden shifts to landlord to prove property subject to lien. Dunn v. Hart, 120 Miss. 132, 81 So. 795, 1919 Miss. LEXIS 71 (Miss. 1919).

CHAPTER 8.

RESIDENTIAL LANDLORD AND TENANT ACT

Sec.

89-8-1. Short title.
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§ 89-8-1. Short title.

This chapter shall be known and may be cited as the "Residential Landlord and Tenant Act."

HISTORY: Laws, 1991, ch. 478, § 1, eff from and after July 1, 1991.

Editor's Notes — Laws of 1991, ch. 478, § 16, provides:
"SECTION 16. This act shall take effect and be in force from and after July 1, 1991, and shall apply only to rental agreements entered into after such date."

RESEARCH REFERENCES

Law Reviews.
Bell, The Mississippi Landlord-Tenant Act of 1991. 61 Miss. L. J. 527, Winter, 1991.

§ 89-8-3. Application of chapter.

(1) This chapter shall apply to, regulate and determine rights, obligations and remedies under any rental agreement entered into after July 1, 1991, wherever made, for a dwelling unit located within this state. The rights, obligations and remedies of this chapter shall be in addition to all other rights, obligations and remedies provided by law and shall not alter or abridge the

rights, obligations and remedies available to residential landlords and tenants pursuant to Sections 89-7-1 through 89-7-125.

(2) The following arrangements are not governed by this chapter:

(a) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar service;

(b) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest;

(c) Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(d) Transient occupancy in a hotel, motel or lodgings;

(e) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative; or

(f) Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes or when the occupant is performing agricultural labor for the owner and such premises are rented for less than fair rental value.

HISTORY: Laws, 1991, ch. 478, § 2; Laws, 1993, ch. 312, § 1, eff from and after passage (approved March 12, 1993).

Editor's Notes — Laws of 1991, ch. 478, § 16, provides:
"SECTION 16. This act shall take effect and be in force from and after July 1, 1991, and shall apply only to rental agreements entered into after such date."

§ 89-8-5. Waiver of rights prohibited; provisions prohibited in rental agreement.

In any agreement, oral or written, for the rental of real property as a dwelling place, a landlord or tenant may not agree to waive or otherwise forego any of the rights, duties or remedies under this chapter, except as otherwise provided by this chapter. No rental agreement may provide that the tenant or the landlord:

(a) Authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(b) Agrees to the exculpation or limitation of any liability of the landlord arising as a result of the landlord's willful misconduct or the costs connected therewith.

HISTORY: Laws, 1991, ch. 478, § 3, eff from and after July 1, 1991.

Editor's Notes — Laws of 1991, ch. 478, § 16, provides:
"SECTION 16. This act shall take effect and be in force from and after July 1, 1991, and shall apply only to rental agreements entered into after such date."

Cross References — Right of landlord and tenant to agree that tenant perform duties of landlord, subject to the provisions of this section, see § 89-8-23.

RESEARCH REFERENCES

ALR.

Validity, construction, and effect of provisions of lease exempting landlord or tenant from liability on account of fire. 15 A.L.R.3d 786.

Validity of exculpatory clause in lease exempting lessor from liability. 49 A.L.R.3d 321.

Landlord's liability to third party for repairs authorized by tenant. 46 A.L.R.5th 1.

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant §§ 11-42.

CJS.

51C C.J.S., Landlord and Tenant §§ 184-251.

§ 89-8-7. Definitions; agent of landlord.

(1) Subject to additional definitions contained in subsequent sections of this chapter which apply to specific sections or parts thereof, and unless the context otherwise requires, in this chapter:

(a) "Building and housing codes" includes any law, ordinance, or governmental regulation concerning fitness for habitation, construction, maintenance, operation, occupancy or use of any premises or dwelling unit;

(b) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence or sleeping place by one (1) person who maintains a household or by two (2) or more persons who maintain a common household;

(c) "Good faith" means honesty in fact in the conduct of the transaction concerned and observation of reasonable community standards of fair dealing;

(d) "Landlord" means the owner, lessor or sublessor of the dwelling unit or the building of which it is a part, or the agent representing such owner, lessor or sublessor;

(e) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, and any other legal or commercial entity;

(f) "Owner" means one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to property or (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises, and the term includes a mortgagee in possession;

(g) "Premises" means a dwelling unit and the structure of which it is a part, facilities and appurtenances therein, and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant;

(h) "Rent" means all payments to be made to the landlord under the rental agreement, including any late fees that are required to be paid under the rental agreement by a defaulting tenant;

(i) "Rental agreement" means all agreements, written or oral, except to the extent an agreement under this chapter or Chapter 7, Title 89, Mississippi Code of 1972, must be in writing, and valid rules and regulations adopted under Section 89-8-11 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;

(j) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others;

(k) "Qualified tenant management organizations" means any organization incorporated under the Mississippi Nonprofit Corporation Act, a majority of the directors of which are tenants of the housing project to be managed under a contract authorized by this section and which is able to conform to standards set by the United States Department of Housing and Urban Development as capable of satisfactorily performing the operational and management functions delegated to it by the contract.

(2) For purposes of giving any notice required under this chapter, notice given to the agent of the landlord is equivalent to giving notice to the landlord. The landlord may contract with an agent to assume all the rights and duties of the landlord under this chapter; provided, however, that such a contract does not relieve the landlord of ultimate liability in regard to such rights and duties.

HISTORY: Laws, 1991, ch. 478, § 4, eff from and after July 1, 1991; Laws, 2018, ch. 446, § 6, eff from and after July 1, 2018.

Editor's Notes — Laws of 1991, ch. 478, § 16, provides:
"SECTION 16. This act shall take effect and be in force from and after July 1, 1991, and shall apply only to rental agreements entered into after such date."
Cross References — Mississippi Nonprofit Corporation Act, see §§ 79-11-101 et seq.

§ 89-8-9. Obligation to act in good faith.

Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter, including the landlord's termination of a tenancy or nonrenewal of a lease, imposes an obligation of good faith in its performance or enforcement.

HISTORY: Laws, 1991, ch. 478, § 5, eff from and after July 1, 1991.

Editor's Notes — Laws of 1991, ch. 478, § 16, provides:
"SECTION 16. This act shall take effect and be in force from and after July 1, 1991, and shall apply only to rental agreements entered into after such date."

§ 89-8-11. Rules and regulations of landlord concerning tenant's use and occupancy of premises.

(1) A landlord may, from time to time, adopt rules or regulations, however described, concerning the tenant's use and occupancy of the premises. They are enforceable against the tenant only if:

(a) Their purpose is to promote the convenience, safety or welfare of the tenants in the premises, preserve the landlord's property from abuse, or make a fair distribution of services and facilities provided for the tenants generally;

(b) They are reasonably related to the purpose for which they are adopted;

(c) They apply to all tenants in the premises in a fair manner;

(d) They are sufficiently explicit in their prohibition, direction or limitation of the tenant's conduct to fairly inform him of what he must or must not do to comply;

(e) They are not for the purpose of evading the obligations of the landlord.

(2) A rule or regulation adopted or amended after the tenant enters into the rental agreement is enforceable against the tenant if reasonable notice of its adoption or amendment is given to the tenant and it does not work a substantial modification of the rental agreement.

(3) If the dwelling unit is an apartment in a horizontal property regime, the tenant shall comply with the bylaws of the association of the apartment owners; and if the dwelling unit is an apartment in a cooperative housing corporation, the tenant shall comply with the bylaws of the corporation.

(4) Unless otherwise agreed, the tenant shall occupy his dwelling unit only as a dwelling unit.

HISTORY: Laws, 1991, ch. 478, § 6, eff from and after July 1, 1991.

Editor's Notes — Laws of 1991, ch. 478, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after July 1, 1991, and shall apply only to rental agreements entered into after such date."

Cross References — Definition of "rental agreement" as including all rules and regulations adopted under this section, see § 89-8-7.

RESEARCH REFERENCES

ALR.

Validity of exculpatory clause in lease exempting lessor from liability. 49 A.L.R.3d 321.

Express or implied restriction on lessee's use of residential property for business purposes. 46 A.L.R.4th 496.

Provision in lease as to purpose for which premises are to be used as excluding other uses. 86 A.L.R.4th 259.

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant §§ 11-42.

CJS.

51C C.J.S., Landlord and Tenant §§ 184-251.

§ 89-8-13. Right to terminate tenancy for breach; notice of breach; return of prepaid rent and security; disposition of tenant's abandoned personal property.

(1) If there is a material noncompliance by the tenant with the rental agreement or the obligations imposed by Section 89-8-25, the landlord may terminate the tenancy as set out in subsection (3) of this section or resort to any other remedy at law or in equity except as prohibited by this chapter.

(2) If there is a material noncompliance by the landlord with the rental agreement or the obligations imposed by Section 89-8-23, the tenant may

terminate the tenancy as set out in subsection (3) of this section or resort to any other remedy at law or in equity except as prohibited by this chapter.

(3) The nonbreaching party may deliver a notice to the party in breach in writing, or by email or text message if the breaching party has agreed in writing to be notified by email or text message, specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than fourteen (14) days after receipt of the notice if the breach is not remedied within a reasonable time not in excess of fourteen (14) days; and the rental agreement shall terminate and the tenant shall surrender possession as provided in the notice subject to the following:

(a) If the breach is remediable by repairs, the payment of damages, or otherwise, and the breaching party adequately remedies the breach before the date specified in the notice, the rental agreement shall not terminate;

(b) In the absence of a showing of due care by the breaching party, if substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six (6) months, the nonbreaching party may terminate the rental agreement upon at least fourteen (14) days' notice in writing, or by email or text message if the breaching party has agreed in writing to be notified by email or text message, specifying the breach and the date of termination of the rental agreement;

(c) Neither party may terminate for a condition caused by his own deliberate or negligent act or omission or that of a member of his family or other person on the premises with his consent.

(4) If the rental agreement is terminated, the landlord shall return all prepaid and unearned rent and security recoverable by the tenant under Section 89-8-21.

(5)(a) If the material noncompliance by the tenant is the nonpayment of rent pursuant to the rental agreement, the landlord shall not be required to deliver fourteen (14) days' notice as provided by subsection (3) of this section. In such event, the landlord may seek removal of the tenant from the premises in the manner and with the notice prescribed by Chapter 7, Title 89, Mississippi Code of 1972.

(b) Any justice court judge or other judge presiding over a hearing in which a landlord seeks to remove a tenant for the nonpayment of rent shall abide by the provisions of the rental agreement that was signed by the landlord and the defaulting tenant.

(6) Disposition of personal property, including any manufactured home, of a tenant remaining on the landlord's premises after the tenant has been removed from the premises shall be governed by Section 89-7-35(2) or Section 89-7-41(2).

HISTORY: Laws, 1991, ch. 478, § 7; Laws, 1993, ch. 312, § 2; Laws, 2015, ch. 395, § 4, eff from and after July 1, 2015; Laws, 2018, ch. 446, § 7, eff from and after July 1, 2018.

Editor's Notes — Laws of 1991, ch. 478, § 16, provides:
"SECTION 16. This act shall take effect and be in force from and after July 1, 1991, and shall apply only to rental agreements entered into after such date."

Cross References — Rights of landlord after expiration of rental agreement notwithstanding the provisions of this section, see § 89-8-17.

OPINIONS OF THE ATTORNEY GENERAL

Party who has been given 30 day notice of first breach has 30 days within which to remedy breach and to thereby prevent rental agreement from terminating; statute provides no such right to remedy or cure second, similar breach after 14 day notice has been given. Alexander, Nov. 12, 1992, A.G. Op. #92-0857.

RESEARCH REFERENCES

ALR.

Failure of landlord to make, or permit tenant to make, repairs or alterations required by public authority as constructive eviction. 86 A.L.R.3d 352.

Waiver of statutory demand-for-rent due or notice-to-quit prerequisite of summary eviction of lessee for nonpayment of rent-modern cases. 31 A.L.R.4th 1254.

Express or implied restriction on lessee's use of residential property for business purposes. 46 A.L.R.4th 496.

Provision in lease as to purpose for which premises are to be used as excluding other uses. 86 A.L.R.4th 259.

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant §§ 246, 825-861.

16 Am. Jur. Pl and Pr Forms (Rev), Landlord and Tenant, Forms 171-182.

CJS.

51C C.J.S., Landlord and Tenant §§ 102-119.

§ 89-8-15. Repair of defects by tenant.

(1) If, within thirty (30) days after written notice to the landlord of a specific and material defect which constitutes a breach of the terms of the rental agreement or of the obligation of the landlord under Section 89-8-23, the landlord fails to repair such defect, the tenant:

(a) May repair such defect himself; and

(b) Except as otherwise provided in subsection (2) of this section, shall be entitled to reimbursement of the expenses of such repairs within forty-five (45) days after submission to the landlord of receipted bills for such work, provided that:

(i) The tenant has fulfilled his affirmative obligations under Section 89-8-25;

(ii) The expenses incurred in making such repairs do not exceed an amount equal to one (1) month's rent;

(iii) The tenant has not exercised the remedy provided by this section in the six (6) months immediately preceding; and

(iv) The tenant is current in his rental payment.

(2) A tenant shall not be entitled to be reimbursed for repairs made pursuant to this section in an amount greater than the usual and customary charge for such repairs.

(3) Before correcting a condition affecting facilities shared by more than one (1) dwelling unit, the tenant shall notify all other tenants sharing such facilities of his plans and shall so arrange the work as to create the least practicable inconvenience to the other tenants.

(4) The cost of repairs made by a tenant pursuant to this section may be offset against future rent.

(5) No provision of this section shall be construed to grant a lien against the real property.

HISTORY: Laws, 1991, ch. 478, § 8, eff from and after July 1, 1991.

Editor's Notes — Laws of 1991, ch. 478, § 16, provides:
"SECTION 16. This act shall take effect and be in force from and after July 1, 1991, and shall apply only to rental agreements entered into after such date."

RESEARCH REFERENCES

ALR.

Validity, construction, and effect of provisions of lease exempting landlord or tenant from liability on account of fire. 15 A.L.R.3d 786.

Who, as between landlord and tenant, must make, or bear expense of, alterations, improvements, or repairs ordered by public authorities. 22 A.L.R.3d 521.

Tenant's right, where landlord fails to make repairs, to have them made and set off cost against rent. 40 A.L.R.3d 1369.

Failure of landlord to make, or permit tenant to make, repairs or alterations required by public authority as constructive eviction. 86 A.L.R.3d 352.

Landlord's liability to third party for repairs authorized by tenant. 46 A.L.R.5th 1.

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant §§ 631, 710-717, 794.

CJS.

51C C.J.S., Landlord and Tenant §§ 372, 373, 387-401.

Law Reviews.

Note: Developing a housing plan for Mississippi: some program and funding alternatives. 61 Miss. L. J. 605, Winter, 1991.

§ 89-8-17. Rights of landlord after expiration of rental agreement.

Notwithstanding the provisions of Section 89-8-13, the landlord may, at any time after the expiration of a rental agreement, recover possession of the dwelling unit, cause the tenant to quit the dwelling unit involuntarily, demand an increase in rent or decrease the services to which the tenant has been entitled in accordance with any other provisions of this chapter, if such actions by the landlord did not have the dominant purpose of retaliation against the tenant for his actions authorized under this chapter and the landlord received written notice of each condition which was the subject of such actions of the tenant.

HISTORY: Laws, 1991, ch. 478, § 9, eff from and after July 1, 1991.

Editor's Notes — Laws of 1991, ch. 478, § 16, provides:
"SECTION 16. This act shall take effect and be in force from and after July 1, 1991, and shall apply only to rental agreements entered into after such date."

RESEARCH REFERENCES

ALR.

Right of landlord legally entitled to possession to dispossess tenant without legal process. 6 A.L.R.3d 177.

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant §§ 825-861.

16 Am. Jur. Pl & Pr Forms (Rev), Landlord and Tenant, Forms 41-52.

CJS.

51C C.J.S., Landlord and Tenant §§ 89-101.

§ 89-8-19. Length of term of tenancy; notice to terminate tenancy; exception to notice requirement.

(1) Unless the rental agreement fixes a definite term a tenancy shall be week to week in case of a tenant who pays weekly rent, and in all other cases month to month.

(2) The landlord or the tenant may terminate a week-to-week tenancy by written notice given to the other at least seven (7) days prior to the termination date.

(3) The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty (30) days prior to the termination date.

(4) Notwithstanding the provisions of this section or any other provision of this chapter to the contrary, notice to terminate a tenancy shall not be required to be given when the landlord or tenant has committed a substantial violation of the rental agreement or this chapter that materially affects health and safety.

HISTORY: Laws, 1991, ch. 478, § 10, eff from and after July 1, 1991.

Editor's Notes — Laws of 1991, ch. 478, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after July 1, 1991, and shall apply only to rental agreements entered into after such date."

Cross References — Amount of notice required to terminate tenancy not governed by this section, see § 89-7-23.

RESEARCH REFERENCES

ALR.

Right of landlord legally entitled to possession to dispossess tenant without legal process. 6 A.L.R.3d 177.

Retaliatory eviction of tenant for reporting landlord's violation of law. 40 A.L.R.3d 753.

Lease provisions allowing termination or forfeiture for violation of law. 92 A.L.R.3d 967.

Circumstances excusing lessee's failure to give timely notice of exercise of option to renew or extend lease. 27 A.L.R.4th 266.

Sufficiency as to method of giving oral or written notice exercising option to renew or extend lease. 29 A.L.R.4th 903.

What constitutes timely notice of exercise of option to renew or extend lease. 29 A.L.R.4th 956.

Waiver of statutory demand-for-rent due or of notice-to-quit prerequisite of summary eviction of lessee for nonpayment of rent-modern cases. 31 A.L.R.4th 1254.

Sufficiency as to parties giving or receiving notice of exercise of option to renew or extend lease. 34 A.L.R.4th 857.

Specificity of description of premises as affecting enforceability of lease. 73 A.L.R.4th 236.

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant §§ 60-70.

CJS.

51C C.J.S., Landlord and Tenant §§ 89, 130, 142, 144, 150, 173, 183.

§ 89-8-21. Tenant's security deposit.

(1) Any payment or deposit of money, the primary function of which is to secure the performance of a rental agreement or any part of such an agreement, other than a payment or deposit, including an advance payment of rent, made to secure the execution of a rental agreement shall be governed by the provisions of this section.

(2) Any such payment or deposit of money shall be held by the landlord for the tenant who is a party to such agreement. The claim of a tenant to such payment or deposit shall be governed by the provisions of this section. The claim of a tenant to such payment or deposit shall be prior to the claim of any creditor of the landlord.

(3) The landlord, by written notice delivered to the tenant, may claim of such payment or deposit only such amounts as are reasonably necessary to remedy the tenant's defaults in the payment of rent, to repair damages to the premises caused by the tenant, exclusive of ordinary wear and tear, to clean such premises upon termination of the tenancy, or for other reasonable and necessary expenses incurred as the result of the tenant's default, if the payment or deposit is made for any or all of those specific purposes. The written notice by which the landlord claims all or any portion of such payment or deposit shall itemize the amounts claimed by such landlord. Any remaining portion of such payment or deposit shall be returned to the tenant no later than forty-five (45) days after the termination of his tenancy, the delivery of possession and demand by the tenant.

(4) The retention by a landlord or transferee of a payment or deposit or any portion thereof, in violation of this section and with absence of good faith, may subject the landlord or his transferee to damages not to exceed Two Hundred Dollars ($200.00) in addition to any actual damages.

HISTORY: Laws, 1991, ch. 478, § 11, eff from and after July 1, 1991.

Editor's Notes — Laws of 1991, ch. 478, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after July 1, 1991, and shall apply only to rental agreements entered into after such date."

Cross References — Duty of landlord to return all prepaid and unearned rent and security recoverable by tenant under this section if rental agreement is terminated, see § 89-8-13.

RESEARCH REFERENCES

Am. Jur.
49 Am. Jur. 2d, Landlord and Tenant §§ 522-528.

CJS.
51D C.J.S., Landlord and Tenant §§ 472-476.

§ 89-8-23. Duties of landlord.

(1) A landlord shall at all times during the tenancy:

(a) Comply with the requirements of applicable building and housing codes materially affecting health and safety;

(b) Maintain the dwelling unit, its plumbing, heating and/or cooling system, in substantially the same condition as at the inception of the lease, reasonable wear and tear excluded, unless the dwelling unit, its plumbing, heating and/or cooling system is damaged or impaired as a result of the deliberate or negligent actions of the tenant.

(2) No duty on the part of the landlord shall arise under this section in connection with a defect which is caused by the deliberate or negligent act of the tenant or persons on the premises with the tenant's permission.

(3) Subject to the provisions of Section 89-8-5, the landlord and tenant may agree in writing that the tenant perform some or all of the landlord's duties under this section, but only if the transaction is entered into in good faith.

(4) No duty on the part of the landlord shall arise under this section in connection with a defect which is caused by the tenant's affirmative act or failure to comply with his obligations under Section 89-8-25.

HISTORY: Laws, 1991, ch. 478, § 12, eff from and after July 1, 1991.

Editor's Notes — Laws of 1991, ch. 478, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after July 1, 1991, and shall apply only to rental agreements entered into after such date."

Cross References — Right of tenant to terminate tenancy for landlord's noncompliance with obligations imposed by this section, see § 89-8-13.

Right of tenant to make repairs of defects constituting breach of landlord's obligations under this section, see § 89-8-15.

JUDICIAL DECISIONS

1. In general.

This section is not a basis for holding a landlord negligent per se for all housing code violations, and such an interpretation would lead to inequitable and extreme results. Sweatt v. Murphy, 733 So. 2d 207, 1999 Miss. LEXIS 43 (Miss. 1999).

Because the Residential Landlord and Tenant Act informed the Mississippi Supreme Court's decision to hold that a warranty of habitability applied to residential leases, after concluding that such warranty would apply to mobile home lots, a court denied property management companies' motion for summary judgment in a tenant's suit to recover damages for personal injuries that he sustained when he tripped over a broken sidewalk in front of his rented lot; although the tenant had signed a lease stating that he was responsible for making all repairs, whether the tenant waived the warranty of habitability was a question for the jury. Moorman v. Tower Mgmt. Co., 451 F. Supp. 2d 846, 2006 U.S. Dist. LEXIS 67246 (S.D. Miss. 2006).

RESEARCH REFERENCES

ALR.

Validity, construction, and effect of provisions of lease exempting landlord or tenant from liability on account of fire. 15 A.L.R.3d 786.

Who, as between landlord and tenant, must make, or bear expense of, alterations, improvements, or repairs ordered by public authorities. 22 A.L.R.3d 521.

Validity of exculpatory clause in lease exempting lessor from liability. 49 A.L.R.3d 321.

Landlord's liability to third party for repairs authorized by tenant. 46 A.L.R.5th 1.

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant §§ 618-770.

CJS.

51C C.J.S., Landlord and Tenant §§ 366-373, 402-407.

§ 89-8-25. Duties of tenant.

A tenant shall:

(a) Keep that part of the premises that he occupies and uses as clean and as safe as the condition of the premises permits;

(b) Dispose from his dwelling unit all ashes, rubbish, garbage and other waste in a clean and safe manner in compliance with community standards;

(c) Keep all plumbing fixtures in the dwelling unit used by the tenant as clean as their condition permits;

(d) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators, in the premises;

(e) Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any other person to do so;

(f) Conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of their premises;

(g) Inform the landlord of any condition of which he has actual knowledge which may cause damage to the premises;

(h) To the extent of his legal obligation, maintain the dwelling unit in substantially the same condition, reasonable wear and tear excepted, and comply with the requirements of applicable building and housing codes materially affecting health and safety;

(i) Not engage in any illegal activity upon the leased premises as documented by a law enforcement agency.

HISTORY: Laws, 1991, ch. 478, § 13; Laws, 1994, ch. 331, § 1, eff from and after July 1, 1994.

Editor's Notes — Laws of 1991, ch. 478, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after July 1, 1991, and shall apply only to rental agreements entered into after such date."

Cross References — Right of landlord to terminate tenancy for tenant's noncompliance with obligations imposed by this section, see § 89-8-13.

Right of tenant to receive reimbursement for expense of repairs if tenant has fulfilled his affirmative obligations under this section, see § 89-8-15.

No duty on part of landlord arises in connection with defect caused by tenant's failure to comply with his obligations under this section, see § 89-8-23.

RESEARCH REFERENCES

ALR.

Validity, construction, and effect of provisions of lease exempting landlord or tenant from liability on account of fire. 15 A.L.R.3d 786.

Who, as between landlord and tenant, must make, or bear expense of, alterations, improvements, or repairs ordered by public authorities. 22 A.L.R.3d 521.

Tenant's obligation under lease as basis of tort liability to third persons. 44 A.L.R.3d 943.

Validity of exculpatory clause in lease exempting lessor from liability. 49 A.L.R.3d 321.

Express or implied restriction on lessee's use of residential property for business purposes. 46 A.L.R.4th 496.

Landlord's liability to third party for repairs authorized by tenant. 46 A.L.R.5th 1.

Am. Jur.

49 Am. Jur. 2d, Landlord and Tenant §§ 771-824.

CJS.

51C C.J.S., Landlord and Tenant §§ 102-119, 387-401.

§ 89-8-27. Housing authorities authorized to contract with tenant management organizations; authority to sell public housing units to tenant management organizations.

Any county, municipality, regional housing authority or local housing authority in the state may make application to and contract with qualified tenant management organizations for the operation and management of housing projects of the authority as a means of reducing vacancies, reducing administrative costs and creating jobs from the establishment of maintenance teams. Such counties, municipalities, regional housing authorities or local housing authorities shall have the authority to sell public housing units to such tenant management organizations, provided that such sale is in compliance with any applicable federal laws and regulations and any applicable state laws and regulations.

HISTORY: Laws, 1991, ch. 478, § 14, eff from and after July 1, 1991.

Editor's Notes — Laws of 1991, ch. 478, § 16, provides:

"SECTION 16. This act shall take effect and be in force from and after July 1, 1991, and shall apply only to rental agreements entered into after such date."

RESEARCH REFERENCES

Law Reviews.

Note: Developing a housing plan for Mississippi: some program and funding alternatives. 61 Miss. L. J. 605, Winter, 1991.

Beard and Hopkins, Building homes,

building neighborhoods: family selection and family nurture for low income housing in two southern communities. 61 Miss. L. J. 631, Winter, 1991.

§ 89-8-29. Derrick Beard Act; termination of lease of residential premises by cosigner upon death of lessee; presumption of termination; cosigner's choice not to terminate; effect of termination on certain liabilities of lessee's estate or cosigner; applicability of section.

(1) This section shall be known and may be cited as the "Derrick Beard Act."

(2) Any cosigner of a lease of a residential premises may terminate, and is presumed to have terminated, the lease before its expiration date upon the death of the lessee or, if there is more than one (1) lessee, upon the death of all lessees. The cosigner must provide notice to the lessor within thirty (30) days of the death of the lessee, or upon the death of all the lessees, if he or she chooses not to terminate the lease.

(3) The termination of a lease under this section shall not relieve the lessee's estate or lessee's cosigner from liability for:

(a) The payment of rent or other sums owed before the lessee's death or the death of all lessees;

(b) The payment of rent or other sums owed for the remainder of the month or other thirty-day period during which the death occurred; or

(c) The payment of amounts necessary to restore the premises to its condition at the commencement of the tenancy, ordinary wear and tear excepted.

(4) Any attempted waiver by a lessor and lessee or lessee's cosigner, by contract or otherwise, of the right of termination provided by this section shall be void and unenforceable.

(5) The provisions of this section shall apply to leases entered into or renewed from and after July 1, 2011.

HISTORY: Laws, 2011, ch. 392, § 1, eff from and after July 1, 2011.

CHAPTER 9.

CONDOMINIUMS

Sec.

89-9-1. Citation of chapter.
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89-9-15. Partition of common areas or of tenancy in common in condominium.
89-9-17. Recording, enforcement and provisions of declaration of restrictions.
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89-9-21. Liability of owner for assessment upon condominium; lien on assessed condominium; recording, priority, enforcement, etc., of lien.
89-9-23. Lien for labor performed or services or materials furnished.
89-9-25. Acquisition, etc., of personal property by management body for benefit of condominium owners; transfer of beneficial interest.
89-9-27. Construction of deed, declaration, or plan for condominium project.
89-9-29. Liabilities of unit owners.
89-9-31. Taxes and special assessments; provisions of declaration enforceable after foreclosure of assessment, tax deed, etc.; exemption as homestead.
89-9-33. Construction of local zoning ordinances.
89-9-35. Action for partition of condominium project by sale thereof.
89-9-37. Action for partition of condominium project by sale; venue; powers of court; sale.

§ 89-9-1. Citation of chapter.

This chapter shall be known and may be cited as the "Mississippi Condominium Law."

HISTORY: Codes, 1942, § 896-01; Laws, 1964, ch. 270, § 1.

Cross References — Inclusion of condominium units within exemptions from taxation of homesteads, see § 27-33-19.

RESEARCH REFERENCES

ALR.

Liability of condominium association or corporation for injury allegedly caused by condition of premises. 45 A.L.R.3d 1171.

Erection of condominium as violation of restrictive covenant forbidding erection of apartment houses. 65 A.L.R.3d 1212.

Proper party plaintiff in action for injury to common areas of condominium development. 69 A.L.R.3d 1148.

Validity and construction of condominium association's regulations governing members' use of common facilities. 72 A.L.R.3d 308.

Standing to bring action relating to title in real property of condominium. 72 A.L.R.3d 314.

Self-dealing by developers of condominium project as affecting contracts or leases with condominium association. 73 A.L.R.3d 613.

Enforceability of bylaw or other rule of condominium or co-operative association restricting occupancy by children. 100 A.L.R.3d 241.

Regulation of time-share or interval ownership interests in real estate. 6 A.L.R.4th 1288.

Condominium association's liability to unit owner for injuries caused by third person's criminal conduct. 59 A.L.R.4th 489.

Am. Jur.

15A Am. Jur. 2d, Condominiums and Cooperative Apartments §§ 1-3.

7 Am. Jur. Pl & Pr Forms (Rev), Condominiums and Cooperative Apartments, Forms 1 et seq.

§ 89-9-3. Purpose of chapter.

The purpose of this chapter is to give statutory recognition to the condominium form of ownership of real property. It shall not be construed as repealing or amending any law now in effect except those in conflict herewith, and any such conflicting laws shall be affected only insofar as they apply to condominiums.

HISTORY: Codes, 1942, § 896-02; Laws, 1964, ch. 270, § 2.

§ 89-9-5. Definitions.

For the purpose of this chapter, the following words and phrases as used herein, unless a different meaning is plainly required by the context, shall have the following meanings:

(1) "Condominium" means that form of ownership of property under which units of improvements are subject to ownership by different owners and there is appurtenant to each unit as part thereof an undivided share in the common areas.

(2) "Unit" means the elements of a condominium which are not owned in common with the owners of other condominiums in the project.

(3) "Project" means the entire parcel of real property divided, or to be divided into condominiums, including all structures thereon.

(4) "Common areas" means the entire project excepting all units therein granted or reserved.

(5) "To divide" real property means to divide the ownership thereof by conveying one or more condominiums therein but less than the whole thereof.

(6) "Real property" means and includes an estate in fee simple in the land or a leasehold therein or any other estate in land recognized by law together with the building or buildings, all improvements and structures thereon and all easements, rights, and appurtenances belonging thereto.

HISTORY: Codes, 1942, § 896-03; Laws, 1964, ch. 270, § 3; Laws, 1970, ch. 306, § 1, eff from and after passage (approved March 2, 1970).

JUDICIAL DECISIONS

ANALYSIS

1. Parking space.
2. Re-subdividing.

1. Parking space.

Pursuant to Miss. Code Ann. § 89-9-5(2) and (4), a unit contained only non-common elements, and since the Declaration of Condominium was never validly amended, the disputed parking space remained a common element of the condominium, and all owners in the condominium complex owned the parking space as owners of a common element of a condominium; however, the owner still had the exclusive right to use the parking space, free from interference by the neighbors, as stated in the Declaration of Condominium. Brice v. Ferrell, 918 So. 2d 887, 2006 Miss. App. LEXIS 26 (Miss. Ct. App. 2006).

2. Re-subdividing.

Construing the term "re-subdivided" most strongly against the homeowners and in favor of the developer, the prohibition that the lots were not to be re-subdivided meant that the platted lots were not to be divided into smaller tracts of land and then re-platted as a subdivision, and it would be unreasonable to find that the covenant drafters intended that a lot owner, who alienated a portion of a lot without assigning it a separate lot number, was engaged in prohibited re-subdividing, especially so in light of the covenant's allowance of multi-family residential structures on the lots, which contemplated more than one property owner per lot; the evidence before the chancellor pertaining to the definition of multi-family residential use was that it included condominiums. COR Devs., LLC v. College Hill Heights Homeowners, LLC, 973 So. 2d 273, 2008 Miss. App. LEXIS 31 (Miss. Ct. App. 2008).

RESEARCH REFERENCES

Am. Jur.

15A Am. Jur. 2d, Condominiums and Cooperative Apartments §§ 1-3.

§ 89-9-7. Condominium constitutes real property.

A condominium is an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in space in a residential, industrial, or commercial building on such real property, such as an apartment, office, or store. A condominium may include in addition a separate interest in other portions of such real property.

Such estate may, with respect to the duration of its enjoyment, be in fee simple, leasehold or any other estate in real property recognized by law.

HISTORY: Codes, 1942, § 896-04; Laws, 1964, ch. 270, § 4; Laws, 1970, ch. 306, § 2, eff from and after passage (approved March 2, 1970).

Cross References — Partition of property, see §§ 11-21-1 et seq.
Party walls, see §§ 89-15-1 et seq.

RESEARCH REFERENCES

ALR.
Standing to bring action relating to real property of condominium. 74 A.L.R.4th 165.

Am. Jur.
15A Am. Jur. 2d, Condominiums and Cooperative Apartments §§ 1-3.

7 Am. Jur. Legal Forms 2d, Deeds § 87.23.1 (deed with covenants of title time-share condominium).

§ 89-9-9. Recordation of plan; amendment or revocation.

The provisions of this chapter shall apply to property divided or to be divided into condominiums only if there shall be recorded in the office of the chancery clerk in the county in which such property lies a plan consisting of (a) a description or survey map of the surface of the land included within the project, (b) diagrammatic floor plans of the building or buildings built or to be built thereon in sufficient detail to identify each unit, its relative location and approximate dimensions, and (c) a certificate consenting to the recordation of such plan pursuant to this chapter signed and acknowledged by the record owner of such real property and all record holders of security interests therein. Such plan may be amended or revoked by a subsequently acknowledged recorded instrument executed by the record owner of such real property and by all record holders of security interests therein. Until such recordation of a revocation, the provisions of this chapter shall continue to apply to such real property. The term "record owner" as used in this section includes all of the record owners of such real property at the time of recordation, but does not include holders of security interests, mineral or royalty interests, easements or rights of way.

HISTORY: Codes, 1942, § 896-05; Laws, 1964, ch. 270, § 5; Laws, 1970, ch. 306, § 3, eff from and after passage (approved March 2, 1970).

Cross References — Recording of instruments generally, see § 89-5-1 et seq.

RESEARCH REFERENCES

Am. Jur.
15A Am. Jur. 2d, Condominiums and Cooperative Apartments §§ 6-9.

§ 89-9-11. Conveyance of unit or apartment, etc., which is part of unit presumed to convey entire condominium.

Unless otherwise expressly stated therein, any transfer or conveyance of a unit or an apartment, office or store which is a part of the unit, shall be presumed to transfer or convey the entire condominium.

HISTORY: Codes, 1942, § 896-06; Laws, 1964, ch. 270, § 6.

RESEARCH REFERENCES

ALR.

Self-dealing by developers of condominium project as affecting contracts or leases with condominium association. 73 A.L.R.3d 613.

Am. Jur.

7 Am. Jur. Legal Forms 2d, Deeds § 87.23.1 (deed with covenants of title time-share condominium).

§ 89-9-13. Incidents of condominium grant.

Unless otherwise expressly provided in the deeds, declaration of restrictions or plan, incidents of a condominium grant are as follows:

(1) The boundaries of the unit granted are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, and the unit includes both the portions of the building so described and the airspace so encompassed. The following are not part of the unit: bearing walls, columns, floors, roofs, foundations, elevator equipment and shafts, central heating, central refrigeration and central air-conditioning equipment, reservoirs, tanks, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located within the unit. In interpreting deeds and plans the existing physical boundaries of the unit or of a unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or in the deed and those of the building.

(2) The common areas are owned by the owners of the units as tenants in common, in equal shares, one for each unit.

(3) A nonexclusive easement for ingress, egress and support through the common areas is appurtenant to each unit, and the common areas are subject to such easement.

(4) Each condominium owner shall have the exclusive right to paint, repaint, tile, wax, paper, or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his own unit.

HISTORY: Codes, 1942, § 896-07; Laws, 1964, ch. 270, § 7.

RESEARCH REFERENCES

ALR.

Validity and enforceability of condominium owner's covenant to pay dues or fees to sports or recreational facility. 39 A.L.R.4th 129.

Standing to bring action relating to real property of condominium. 74 A.L.R.4th 165.

Am. Jur.

29 Am. Jur. Trials 157, Condominium Construction Litigation: Representing the Community Association.

§ 89-9-15. Partition of common areas or of tenancy in common in condominium.

Except as provided in Section 89-9-35, the common areas shall remain undivided, and there shall be no judicial partition thereof. Nothing herein shall be deemed to prevent partition of a tenancy in common in a condominium.

HISTORY: Codes, 1942, § 896-08; Laws, 1964, ch. 270, § 8.

Cross References — Partition of property generally, see § 11-21-1 et seq.

RESEARCH REFERENCES

Am. Jur.
29 Am. Jur. Trials 157, Condominium Construction Litigation: Representing the Community Association.

§ 89-9-17. Recording, enforcement and provisions of declaration of restrictions.

The owner of a project shall, prior to the conveyance of any condominium therein, record a declaration of restrictions relating to such project, which restrictions shall be enforceable equitable servitudes where reasonable, and shall inure to and bind all owners of condominiums in the project. Such servitudes, unless otherwise provided, may be enforced by any owner of a condominium in the project, and may provide, among other things:

(1) For the management of the project by one or more of the following management bodies: the condominium owners, a board of governors elected by the owners or a management agent elected by the owners or the board or named in the declaration; for voting majorities; quorums, notices, meeting dates and other rules governing such body or bodies; and for recordation from time to time, as provided for in the declaration, of certificates of identity of the persons then composing such management body or bodies, which certificates shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

(2) As to any such management body:

(i) For the powers thereof, including power to enforce the provisions of the restrictions;

(ii) For maintenance by it of fire, casualty, liability, workmen's compensation and other insurance insuring condominium owners, and for bonding of the members of any management body;

(iii) For provision by it of payment by it for maintenance, utility, gardening and other services benefiting the common areas; for employment of personnel necessary for operation of the building, and for legal and accounting services;

(iv) For purchase by it of materials, supplies and the like and for maintenance and repair of the common areas;

(v) For payment by it of taxes and special assessments which would be lien upon the entire project or common areas, and for discharge by it of any lien or encumbrance levied against the entire project or common areas;

(vi) For payment by it for reconstruction of any portion or portions of the project damaged or destroyed;

(vii) For delegation by it of its powers;

(viii) For entry by it or its agents into any unit when necessary in connection with maintenance or construction for which such body is responsible;

(ix) For an irrevocable power of attorney to the management body to sell the entire project for the benefit of all of the owners thereof when partition of the project may be had under Section 89-9-35 which said power shall:

(a) Be binding upon all the owners, whether they assume the obligations of the constructions or not;

(b) If so provided in the declaration, be exercisable by less than all, but not less than a majority of the management body;

(c) Be exercisable only after recording of a certificate by those who have power to exercise it, that said power is properly exercisable hereunder, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

(3) For amendments of such restrictions, which amendments, if reasonable and made upon vote or consent of not less than a majority in interest of the owners of the project given after reasonable notice, shall be binding upon every owner and every condominium subject thereto whether the burdens thereon are increased or decreased thereby, and whether the owner of each and every condominium consents thereto or not.

(4) For independent audit of the accounts of any management body.

(5)(i) For reasonable assessments to meet authorized expenditures of any management body, and for a reasonable method for notice and levy thereof, each condominium to be assessed separately for its share of such expenses in proportion, unless otherwise provided, to its owner's fractional interest in any common area;

(ii) For the subordination of the liens securing such assessments to other liens either generally or specifically described.

(6) For the restrictions upon the severability of the component interests in real property which comprise a condominium.

(7) For such covenants and restrictions concerning the use, occupancy and transfer of the units as are permitted by law with reference to real property.

HISTORY: Codes, 1942, § 896-09; Laws, 1964, ch. 270, § 9.

Editor's Notes — Chapter 408 of Laws of 1984 (§ 71-3-1) changed the title of the Workmen's Compensation Law to "Workers' Compensation Law" and provided that the words "workmen's compensation" shall mean "workers' compensation" and "commission" shall mean "workers' compensation commission."

Cross References — Recording of instruments generally, see § 89-5-1 et seq.

RESEARCH REFERENCES

ALR.

Self-dealing by developers of condominium project as affecting contracts or leases with condominium association. 73 A.L.R.3d 613.

Construction of contractual or state regulatory provisions respecting formation, composition, and powers of governing body of condominium association. 13 A.L.R.4th 598.

Validity, construction, and application of statutes, or of condominium association's bylaws or regulations, restricting sale, transfer, or lease of condominium units. 17 A.L.R.4th 1247.

Validity and construction of law regulating conversion of rental housing to condominiums. 21 A.L.R.4th 1083.

Right of condominium association's management or governing body to inspect individual units. 41 A.L.R.4th 730.

Standing to bring action relating to real property of condominium. 74 A.L.R.4th 165.

Validity and construction of condominium bylaws or regulations placing special regulations, burdens, or restrictions on nonresident unit owners. 76 A.L.R.4th 295.

Am. Jur.

15A Am. Jur. 2d, Condominiums and Cooperative Apartments §§ 10-12, 24, 25, 27, 35-38, 46, 53.

7 Am. Jur. Pl & Pr Forms (Rev), Condominiums and Cooperative Apartments, Forms 1 et seq. (rights and obligations of owners among themselves).

5A Am. Jur. Legal Forms 2d, Condominiums §§ 64:33 et seq. (management and operation).

5A Am. Jur. Legal Forms 2d, Condominiums § 64:82 (declaration of covenants, conditions, and restrictions and power of attorney by owner and developer).

7 Am. Jur. Legal Forms 2d, Covenants and Restrictions § 77:88 (restrictions on use of condominium unit).

31 Am. Jur. Trials 193, Litigation Between Association Members for Breach of Condominium Provisions: Noise.

5 Am. Jur. Proof of Facts 3d, Condominium Association's Failure to Protect Residents and Guests from Criminal Attack, §§ 1 et seq.

§ 89-9-19. Restrictions on sales and leases of units in project; first refusal of management not mandatory.

The restrictions and covenants authorized by Section 89-9-17 may prescribe regulations concerning sales or leases of units, and any such restrictions and covenants shall be valid, but it shall not be mandatory that the management body be given the first right or refusal to purchase or lease any such unit which the owner thereof intends to sell or lease.

HISTORY: Codes, 1942, § 896-10; Laws, 1964, ch. 270, § 10; Laws, 1964, ch. 270, § 10; Laws, 1971, ch. 310, § 1, eff from and after passage (approved February 4, 1971).

RESEARCH REFERENCES

ALR.

Self-dealing by developers of condominium project as affecting contracts or leases with condominium association. 73 A.L.R.3d 613.

Validity, construction, and application of statutes, or of condominium association's bylaws or regulations, restricting sale, transfer, or lease of condominium units. 17 A.L.R.4th 1247.

Validity, construction, and application of statutes, or of condominium association's bylaws or regulations, restricting number of units that may be owned by single individual or entity. 39 A.L.R.4th 88.

Validity and construction of condominium bylaws or regulations placing special regulations, burdens, or restrictions on nonresident unit owners. 76 A.L.R.4th 295.

Am. Jur.

15A Am. Jur. 2d, Condominiums and Cooperative Apartments § 42.

7 Am. Jur. Pl & Pr Forms (Rev), Condominiums and Cooperative Apartments, Form 5 (complaint, petition, or declaration against co-owner alleging failure of selling unit to give right of "first refusal" as required by covenants, conditions, and restrictions).

§ 89-9-21. Liability of owner for assessment upon condominium; lien on assessed condominium; recording, priority, enforcement, etc., of lien.

A reasonable assessment upon any condominium made in accordance with a recorded declaration of restrictions permitted by Section 89-9-17 shall be a debt of the owner thereof at the time the assessment is made. The amount of any such assessment plus any other charges thereon, such as interest, costs, attorneys' fees, and penalties, as such may be provided for in the declaration of restrictions, shall be and become a lien upon the condominium assessed when the management body causes to be recorded in the office of the chancery clerk of the county in which such condominium is located a notice of assessment, which shall state the amount of such assessment and such other charges thereon as may be authorized by the declaration of restrictions, a description of the condominium against which the same has been assessed, and the name of the record owner thereof. Such notice shall be signed and verified by an authorized representative of the management body or as otherwise provided in the declaration of restrictions. Such lien shall be recorded in a condominium lien book alphabetically by name of the condominium unit owner, and such books need not be obtained until a condominium plat shall have been first recorded in said county. Upon payment of said assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the management body shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof.

Such lien shall be prior to all other liens recorded subsequent to the recordation of said notice of assessment except that the declaration of restrictions may provide for the subordination thereof to any other liens and encumbrances. Unless sooner satisfied and released, or the enforcement thereof initiated as hereafter provided, such lien shall expire and be of no further force or effect one year from the date of recordation of said notice of assessment; provided, however, that said one-year period may be extended by the management body for a time not to exceed one (1) additional year by recording a written extension thereof.

Such lien against any unit may be enforced by sale of same by the management body, its attorney or other person authorized to make the sale, after failure of the owner to pay such an assessment in accordance with its terms, such sale to be conducted in accordance with the provisions of Section 89-1-55, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. Unless otherwise provided in the declaration of restrictions, the management body shall have power to bid in the condominium at foreclosure sale and to hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments may be maintained without waiving the lien securing the same.

HISTORY: Codes, 1942, § 896-11; Laws, 1964, ch. 270, § 11.

Cross References — Liens generally, see § 85-7-1 et seq.

JUDICIAL DECISIONS

1. Applicability.

By a request to amend its complaint against a debtor to seek foreclosure, a lienholder properly initiated foreclosure, even though the request was not granted until months later because, pursuant to Miss. R. Civ. P. 15, the granting of a motion to amend related back to the original pleadings; thus, the lienholder initiated foreclosure proceedings prior to the expiration of the one-year extension of a condominium lien pursuant to Miss. Code Ann. § 89-9-21. Tally Arms Condo. Ass'n v. Breland, 854 So. 2d 28, 2003 Miss. App. LEXIS 789 (Miss. Ct. App. 2003).

Court disagreed that the lienholder was entitled to more than its original lien amount because there was no authority that allowed a condominium assessment to include language that could encompass all later unfiled assessments. Tally Arms Condo. Ass'n v. Breland, 854 So. 2d 28, 2003 Miss. App. LEXIS 789 (Miss. Ct. App. 2003).

RESEARCH REFERENCES

ALR.

Expenses for which condominium association may assess unit owners. 77 A.L.R.3d 1290.

Standing to bring action relating to real property of condominium. 74 A.L.R.4th 165.

Am. Jur.

15A Am. Jur. 2d, Condominiums and Cooperative Apartments §§ 28, 47, 56, 60.

7 Am. Jur. Pl & Pr Forms (Rev), Condominiums and Cooperative Apartments, Forms 21 et seq. (assessments).

5 Am. Jur. Proof of Facts 3d, Condominium Association's Failure to Protect Residents and Guests from Criminal Attack, §§ 1 et seq.

§ 89-9-23. Lien for labor performed or services or materials furnished.

No labor performed or services or materials furnished with the consent of or at the request of a condominium owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien against the condominium of any other condominium owner, or against any part thereof, or against any other property of any other condominium owner, unless such other owner has expressly consented to or requested the performance of such labor or furnishing of such materials or services. Such express consent shall be deemed to have been given by the owner of any condominium in the case of emergency repairs thereto. Labor performed or services or materials furnished for the common areas, if duly authorized by a management body provided for in a declaration of restrictions governing the property, shall be deemed to be performed or furnished with the express consent of each condominium owner. The owner of any condominium may remove his condominium from a lien against two (2) or more condominiums or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by such lien which is attributable to his condominium.

HISTORY: Codes, 1942, § 896-12; Laws, 1964, ch. 270, § 12.

Cross References — Liens generally, see § 85-7-1 et seq.

RESEARCH REFERENCES

ALR.
Expenses for which condominium association may assess unit owners. 77 A.L.R.3d 1290.

Am. Jur.
15A Am. Jur. 2d, Condominiums and Cooperative Apartments §§ 28, 47, 56, 60.

7 Am. Jur. Pl & Pr Forms (Rev), Condominiums and Cooperative Apartments, Forms 21 et seq. (assessments).

§ 89-9-25. Acquisition, etc., of personal property by management body for benefit of condominium owners; transfer of beneficial interest.

Unless otherwise provided by a declaration of restrictions under Section 89-9-17, the management body, if any, provided for therein, may acquire and hold, for the benefit of the condominium owners, tangible and intangible personal property and may dispose of the same by sale or otherwise; and the beneficial interest in such personal property shall be owned by the condominium owners in the same proportion as their respective interests in the common areas, and shall not be transferrable except with a transfer of a condominium. A transfer of a condominium shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property.

HISTORY: Codes, 1942, § 896-13; Laws, 1964, ch. 270, § 13.

RESEARCH REFERENCES

ALR.
Self-dealing by developers of condominium project as affecting contracts or leases with condominium association. 73 A.L.R.3d 613.

Construction of contractual or state regulatory provisions respecting formation, composition, and powers of governing body of condominium association. 13 A.L.R.4th 598.

§ 89-9-27. Construction of deed, declaration, or plan for condominium project.

Any deed, declaration, or plan for a condominium project shall be liberally construed to facilitate the operation of the project, and its provisions shall be presumed to be independent and severable.

HISTORY: Codes, 1942, § 896-14; Laws, 1964, ch. 270, § 14.

§ 89-9-29. Liabilities of unit owners.

A. The liability of the owner of a unit for common expenses shall be limited to the amounts for which he is assessed from time to time in accordance with this chapter and the declaration.

B. The owners of a unit shall have no personal liability for any damages caused by the governing body on or in connection with the use of common areas. A unit owner shall be liable for injuries or damages resulting from an accident in his own unit to the same extent and degree that the owner of a house, an office, or a store would be liable for an accident occurring therein.

HISTORY: Codes, 1942, § 896-15; Laws, 1964, ch. 270, § 15.

RESEARCH REFERENCES

ALR.

Expenses for which condominium association may assess unit owners. 77 A.L.R.3d 1290.

Personal liability of owner of condominium unit to one sustaining personal injuries or property damage by condition of common areas. 39 A.L.R.4th 98.

Liability of owner of unit in condominium, recreational development, timeshare property, or the like, for assessment in support of common facilities levied against and unpaid by prior owner. 39 A.L.R.4th 114.

Am. Jur.

15A Am. Jur. 2d, Condominiums and Cooperative Apartments §§ 44, 57-60.

7 Am. Jur. Pl & Pr Forms (Rev), Condominiums and Cooperative Apartments, Forms 51 et seq. (rights and obligations between owners and third persons).

5 Am. Jur. Proof of Facts 3d, Condominium Association's Failure to Protect Residents and Guests from Criminal Attack, §§ 1 et seq.

§ 89-9-31. Taxes and special assessments; provisions of declaration enforceable after foreclosure of assessment, tax deed, etc.; exemption as homestead.

(1) Property taxes and special assessments assessed by municipalities, counties, the State of Mississippi, and other taxing authorities shall be assessed against and collected on the unit and the common areas and not upon the project as a whole. Each unit and common areas shall be separately assessed for ad valorem taxes and special assessments as a single parcel. The taxes and special assessments levied against each unit and common areas shall constitute a lien only upon such unit and common areas so assessed and upon no other portion of the project.

(2) All provisions of a declaration relating to a unit or common areas sold for taxes or special assessments shall survive and be enforceable after the issuance of a tax deed or other deed upon foreclosure of an assessment, certificate, or lien, a tax deed, tax certificate, or tax lien to the same extent that they would be enforceable against a voluntary grantee, immediate, mediate, or remote, of the owner of the title immediately prior to the delivery of the tax deed or other deed.

(3) Any unit of a condominium project shall be eligible for exemption under the Homestead Exemption Act of 1946, Sections 27-33-1 through 27-33-65, Mississippi Code of 1972, if all other criteria of said sections are met.

HISTORY: Codes, 1942, § 896-16; Laws, 1964, ch. 270, § 16; Laws, 1971, ch. 481, § 1, eff from and after passage (approved March 31, 1971).

Cross References — Exemption of homesteads from certain taxes, see § 27-33-19.
Tax liens generally, see §§ 27-43-1 et seq.

RESEARCH REFERENCES

ALR.
Real-estate taxation of condominiums. 71 A.L.R.3d 952.

Am. Jur.
15A Am. Jur. 2d, Condominiums and Cooperative Apartments §§ 48-50.

§ 89-9-33. Construction of local zoning ordinances.

Unless a contrary intent is clearly expressed, local zoning ordinances shall be construed to treat like structures, lots, or parcels in like manner regardless of whether the ownership thereof is divided by sale of condominiums or into community apartments rather than by lease of apartments, offices, or stores.

HISTORY: Codes, 1942, § 896-17; Laws, 1964, ch. 270, § 17.

RESEARCH REFERENCES

ALR.
Zoning or building regulations as applied to condominiums. 71 A.L.R.3d 866.

§ 89-9-35. Action for partition of condominium project by sale thereof.

Where several persons own condominiums, as defined in the Mississippi Condominium Law, in a condominium project, as defined in said law, an action may be brought by one or more of such persons for partition thereof by sale of the entire project, as though the owners of all of the condominiums in such project were tenants in common in the entire project in the same proportion as their interests in the common areas; provided, however, that a partition shall be made only upon the showing that: (1) three (3) years after damage or destruction to the project which renders a material part thereof unfit for its use prior thereto, the project has not been rebuilt or repaired substantially to its state prior to its damage or destruction, or (2) that three-fourths (¾) or more of the project has been destroyed or substantially damaged, and that condominium owners holding in aggregate more than a fifty percent (50%) interest in the common areas are opposed to repair or restoration of the project, or (3) that the project has been in existence in excess of fifty (50) years, that it is obsolete and uneconomic, and that condominium owners holding in aggregate more than a fifty percent (50%) interest in the common areas are opposed to repair or restoration of the project, or (4) that conditions for such a partition by sale set forth in the declaration of restrictions entered into with respect to such project, pursuant to the provisions of the Mississippi Condominium Law, have been met.

HISTORY: Codes, 1942, § 896-18; Laws, 1964, ch. 270, § 18.

Cross References — Partition of property, generally, see §§ 11-21-1 et seq.

RESEARCH REFERENCES

ALR.

Standing to bring action relating to real property of condominium. 74 A.L.R.4th 165.

Am. Jur.

7 Am. Jur. Pl & Pr Forms (Rev), Condominiums and Cooperative Apartments, Forms 41 et seq. (partition).

§ 89-9-37. Action for partition of condominium project by sale; venue; powers of court; sale.

Such action for partition by sale shall be brought in the chancery court of that county in which the project or some part thereof is situated, subject to the provisions for partition of lands by sale, as far as applicable, and the court shall have power to make all such orders as may be necessary to protect the rights of parties, and any sale ordered in such cases shall be made and reported as in the case of the sale of land; and decrees making partition shall vest title according to their terms. In such cases the court or chancellor may make all orders, and cause to be issued all process necessary to secure the rights of parties.

HISTORY: Codes, 1942, § 896-19; Laws, 1964, ch. 270, § 19.

RESEARCH REFERENCES

ALR.

Standing to bring action relating to real property of condominium. 74 A.L.R.4th 165.

Am. Jur.

7 Am. Jur. Pl & Pr Forms (Rev), Condominiums and Cooperative Apartments, Forms 41 et seq. (partition).

CHAPTER 11.

ESCHEATS

Sec.

89-11-1. When property shall escheat.
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89-11-23. Proceeds of personal property reclaimed.
89-11-25. Proceedings, where had.
89-11-27. Costs shall be allowed as in other cases.
89-11-29. Institution of escheat proceedings.
89-11-31. Sale of severed minerals which escheat to the state.

§ 89-11-1. When property shall escheat.

If any person die intestate, seized of or holding, either in possession or in right, at the time of his death, real or personal property, or money or choses in action, whether such person were a citizen of the state or not, and leave no heir capable of inheriting the same, all such property shall escheat to the state.

HISTORY: Codes, 1857, ch. 17, art. 1; 1871, § 1844; 1880, § 881; 1892, § 1701; 1906, § 1878; Hemingway's 1917, § 1521; 1930, § 1511; 1942, § 480.

Cross References — Escheat of funds held by receiver of unknown or nonresident owner of mineral interest, see § 11-17-34.

Escheat of public lands purchased in violation of statute, see § 29-1-73.

Procedures for sale of severed minerals which escheat to the state, see § 89-11-31.

JUDICIAL DECISIONS

1. In general.

The state, both in view of its rights under escheat to the property of intestates who die without heirs and parens patriae for the protection of the interests of any possible unknown heir who might appear, may bring suit to contest a probated will. Warren v. Sidney's Estate, 183 Miss. 669, 184 So. 806, 1938 Miss. LEXIS 281 (Miss. 1938).

RESEARCH REFERENCES

Am. Jur.

1 Am. Jur. 2d, Abandoned, Lost, and Unclaimed Property §§ 2 et seq.

27A Am. Jur. 2d, Escheat §§ 1 et seq.

§ 89-11-3. County administrator or sheriff is escheator; his duty, and duty of the assessor.

The county administrator, if there be one, and, if none, the sheriff, shall be escheator for his county, and he shall ascertain by all practicable means what estate or property within his county, for defect of heirs, has escheated to the state, and he shall institute proceedings therefor as hereinafter directed; and the assessor of taxes shall annually, on the completion of his assessment, report to the escheator a list of all property that may have escheated to the state within the preceding twelve (12) months, or previously if not already reported, or to which no heir is known; and the assessor shall also furnish the land commissioner with a copy of such report.

HISTORY: Codes, Hutchinson's 1848, ch. 46, art. 3 (2); 1857, ch. 17, art. 2; 1871, § 1845; 1880, § 882; 1892, § 1702; 1906, § 1879; Hemingway's 1917, § 1522; 1930, § 1512; 1942, § 481.

Editor's Notes — Pursuant to Section 7-11-4, effective January 1, 1980, the words "state land commissioner," "land commissioner," "state land office" and "land office" shall mean the secretary of state.

Cross References — Granting of letters testamentary or of administration to county administrator, see §§ 91-7-79 et seq.

JUDICIAL DECISIONS

1. In general.

The sheriff, as public escheator, may bring suit to contest a probated will. Warren v. Sidney's Estate, 183 Miss. 669, 184 So. 806, 1938 Miss. LEXIS 281 (Miss. 1938).

Land commissioner could not maintain escheat proceeding to recover gasoline tax subject to be refunded to dealer, where gasoline purchasers were unknown. Moore v. Eastman Gardiner Lumber Co., 156 Miss. 359, 126 So. 44, 1930 Miss. LEXIS 183 (Miss. 1930).

§ 89-11-5. Proceedings to establish escheats.

In all cases when property may have escheated to the state, it shall be the duty of the escheator of the county in which said property may be to file in the chancery court a bill in the name of the state to have the escheat judicially declared; the bill shall contain a statement of the name of the last owner, and that he died without heirs, the names of all persons who claim an interest in the property, if any be known, and also a description of the property and who, if any one, is in possession, and an averment that the same has escheated to the state for want of heirs.

HISTORY: Codes, Hutchinson's 1848, ch. 46, art. 3 (2); 1857, ch. 17, art. 3; 1871, § 1846; 1880, § 883; 1892, § 1703; 1906, § 1880; Hemingway's 1917, § 1523; 1930, § 1513; 1942, § 482.

JUDICIAL DECISIONS

1. In general.

State must enforce escheat on strength of own title and not on weakness of defendant's. State ex rel. Nall v. Williams, 99 Miss. 293, 54 So. 951, 1911 Miss. LEXIS 211 (Miss. 1911).

Intestate is presumed to have left heirs capable of inheriting. State ex rel. Nall v. Williams, 99 Miss. 293, 54 So. 951, 1911 Miss. LEXIS 211 (Miss. 1911).

RESEARCH REFERENCES

Am. Jur.

1 Am. Jur. 2d, Abandoned, Lost, and Unclaimed Property §§ 46 et seq.

27A Am. Jur. 2d, Escheat §§ 20 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Escheat, Forms 1 et seq. (proceedings to enforce escheat).

CJS.

30A C.J.S., Escheat §§ 14 et seq.

§ 89-11-7. What persons summoned; publication made.

On the filing of the bill, the clerk shall issue a summons to all persons residing in this state and named in the bill as having or claiming an interest in the property, and also to the person named as being in possession, to appear and answer the same; and he shall give notice, by publication as in other cases, to all parties, known or unknown, having or claiming an interest in the property, to appear and answer the bill; which notice shall contain a description of the property, and the name, residence, and place of death of the last owner, if known.

HISTORY: Codes, 1857, ch. 17, art. 4; 1871, § 1847; 1880, § 884; 1892, § 1704; 1906, § 1881; Hemingway's 1917, § 1524; 1930, § 1514; 1942, § 483.

§ 89-11-9. A claimant not a party may answer.

Any person who claims an estate or interest in property against which proceedings have been instituted to have an escheat judicially declared, though not named in the bill or summoned, may, nevertheless, appear and answer the bill, interposing his title or claim, but shall not recover costs unless it appear that he has some estate or interest in the property, even though the state fail in establishing an escheat.

HISTORY: Codes, 1857, ch. 17, art. 5; 1871, § 1848; 1880, § 885; 1892, § 1705; 1906, § 1882; Hemingway's 1917, § 1525; 1930, § 1515; 1942, § 484.

RESEARCH REFERENCES

ALR.

Insured's right of action for arbitrary nonrenewal of policy, where insurer has option not to renew. 37 A.L.R.4th 862.

§ 89-11-11. Proceedings in court.

The proceedings shall be conducted as other suits in the chancery court;

and, if determined in favor of the state, the court shall decree the property escheated to the state, and thereby the state shall be seized and possessed of the property in law and in fact; but no final decree shall be rendered therein within less than twelve (12) months from the commencement of the suit. The successor of the escheator who filed the bill may appear and conduct the suit without revivor or alteration of the pleadings.

HISTORY: Codes, Hutchinson's 1848, ch. 46, art. 3 (7); 1857, ch. 17, art. 6; 1871, § 1849; 1880, § 886; 1892, § 1706; 1906, § 1883; Hemingway's 1917, § 1526; 1930, § 1516; 1942, § 485.

§ 89-11-13. Persons in possession liable for rent or hire of escheated property.

The person in possession of escheated property shall be liable for the rent of real estate and hire of personal property, whether he claim title or not. Where the escheat is established, the court shall determine and decree rent or hire to the state, if any be due, and may make an allowance in proper cases to a party for the care of the property. In case the party in possession refuse or fail to deliver possession to the escheator who is authorized to receive the same, such party shall be liable to double the value of the rent or hire for the time he may so withhold possession, to be determined by the court on petition of the escheator. Decrees rendered in matters of escheats shall be conclusive against all parties thereto and privies, but may be reviewed by the supreme court on appeal.

HISTORY: Codes, Hutchinson's 1848, ch. 46, art. 3 (8); 1857, ch. 17, art. 7; 1871, § 1850; 1880, § 887; 1892, § 1707; 1906, § 1884; Hemingway's 1917, § 1527; 1930, § 1517; 1942, § 486.

RESEARCH REFERENCES

ALR.

What constitutes tenant's holding over of leased premises. 13 A.L.R.5th 169.

§ 89-11-15. Reports by escheator.

On the establishment of any escheat of land, the escheator shall, within thirty (30) days, report the fact to the land commissioner, giving a description of the land and its value, under the direction of the court. The land commissioner shall at once register the land in the register of escheated lands.

HISTORY: Codes, 1892, § 1708; 1906, § 1885; Hemingway's 1917, § 1528; 1930, § 1518; 1942, § 487.

Editor's Notes — Pursuant to Section 7-11-4, effective January 1, 1980, the words "state land commissioner," "land commissioner," "state land office" and "land office" shall mean the secretary of state.

Cross References — Duties and powers of land commissioner generally, see

§ 7-11-11.
Sale of escheated lands, see § 29-1-65.

RESEARCH REFERENCES

Am. Jur.
27A Am. Jur. 2d, Escheat §§ 40 et seq.
9 Am. Jur. Pl & Pr Forms (Rev), Escheat, Form 17 (judgment or decree declaring property escheated and directing sale of property).

CJS.
30A C.J.S., Escheat § 27.

§ 89-11-17. Sale of escheated personalty; payment of debts.

The court which decrees any escheat thereof shall retain jurisdiction of personal property after decreeing the escheat, and shall require the same to be sold and the net proceeds to be paid into the state treasury; and it may provide for the payment of the debts of the deceased owner out of the proceeds of the personal property before the same be paid over; but any petition by a creditor, alleging an indebtedness due to him by the late owner of real or personal property which may escheat, must be filed in the suit for the declaration of the escheat before final hearing thereof, accompanied with the claim probated as if administration had been granted, or the claim will be barred.

HISTORY: Codes, 1892, § 1709; 1906, § 1886; Hemingway's 1917, § 1529; 1930, § 1519; 1942, § 488.

RESEARCH REFERENCES

Am. Jur.
27A Am. Jur. 2d, Escheat §§ 40 et seq.
9 Am. Jur. Pl & Pr Forms (Rev), Escheat, Form 17 (judgment or decree declaring property escheated and directing sale of property).

CJS.
30A C.J.S., Escheat § 27.

§ 89-11-19. How real estate subjected to payments of debts.

If the personal property of a deceased owner of escheated property be insufficient for the payment of his debts, or if there be no personal property, the petition of the creditor must show the fact. In such case the court will require the land commissioner to be notified of the pendency of the petition, and he may appear and contest the petition. And if the real estate be decreed subject to the payment of debts, the court will order the sale of a sufficiency thereof for that purpose, and require any balance of proceeds to be paid into the state treasury through the land office.

HISTORY: Codes, 1892, 1710; 1906, § 1887; Hemingway's 1917, § 1530; 1930, § 1520; 1942, § 489.

Editor's Notes — Pursuant to Section 7-11-4, effective January 1, 1980, the words "state land commissioner," "land commissioner," "state land office" and "land office" shall mean the secretary of state.

Cross References — Sale of escheated land, see § 29-1-65.

§ 89-11-21. Where escheated land is recovered from the purchaser.

If escheated land be recovered from the purchaser at the suit of an heir of the deceased owner, by proceeding instituted within ten (10) years after the escheat was declared, the state will refund to the purchaser the purchase-money with three percent (3%) per annum interest; the purchaser being liable to the heir for rents and profits, which he may recoup, pro tanto, by the improvements put upon the land, if any, and all taxes paid thereon. In all such suits to recover the land of the state's purchaser, or his assigns, the land commissioner shall be made a party.

HISTORY: Codes, Hutchinson's 1848, ch. 46, art. 3 (14); 1857, ch. 17, art. 10; 1871, § 1853; 1880, § 890; 1892, § 1711; 1906, § 1888; Hemingway's 1917, § 1531; 1930, § 1521; 1942, § 490.

Editor's Notes — Pursuant to Section 7-11-4, effective January 1, 1980, the words "state land commissioner," "land commissioner," "state land office" and "land office" shall mean the secretary of state.

RESEARCH REFERENCES

Am. Jur.

27A Am. Jur. 2d, Escheat §§ 44 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Escheat, Forms 31 et seq. (recovery, restoration or reimbursement).

CJS.

30A C.J.S., Escheat §§ 7, 8.

§ 89-11-23. Proceeds of personal property reclaimed.

Any person who is not concluded as a party or privy by a decree in favor of the state in proceedings to establish an escheat, may, at any time within six (6) years after the rendition of the decree, recover of the state, by suit, the net proceeds derived from the sale of personal property and paid into the state treasury, and three percent (3%) interest thereon, if the party shall establish his right to the property and that the same had not properly escheated to the state; but the title of the purchaser of such personal property shall not be thereby disturbed.

HISTORY: Codes, Hutchinson's 1848, ch. 46, art. 3 (14); 1857, ch. 17, art. 11; 1871, § 1854; 1880, § 891; 1892, § 1720; 1906, 1889; Hemingway's 1917, § 1532; 1930, § 1522; 1942, § 491.

§ 89-11-25. Proceedings, where had.

Proceedings to recover real property or the proceeds of personalty escheated, shall be by bill to open the decree declaring the escheat, in the court in which the escheat was decreed.

HISTORY: Codes, 1892, § 1713; 1906, § 1890; Hemingway's 1917, § 1533; 1930, § 1523; 1942, § 492.

§ 89-11-27. Costs shall be allowed as in other cases.

In case the property be not escheated, the costs incurred in behalf of the state shall be paid out of the state treasury, and the court shall cause the same to be certified to the auditor of public accounts, who shall issue his warrant therefor. In case the property shall be adjudged to be escheated, a reasonable commission and attorneys' fees shall be allowed by the court to the escheator, which shall be taxed as costs and, together with all other costs allowed by the court, shall be paid out of the proceeds of the personal property, if the said proceeds be sufficient to pay the same. If the personal property of a deceased owner of escheated property be insufficient for the payment of his debts and the costs so allowed by the court, or if there be no personal property, the court shall decree the real estate subject to the payment of the costs so allowed, and shall order the sale of a sufficiency thereof for that purpose, and require any balance of proceeds to be paid into the state treasury through the land office.

HISTORY: Codes, Hutchinson's 1848, ch. 46, art. 3 (18); 1857, ch. 17, art. 9; 1871, § 1852; 1880, § 889; 1892, § 1714; 1906, § 1891; Hemingway's 1917, § 1534; 1930, § 1524; 1942, § 493.

Editor's Notes — Pursuant to Section 7-11-4, effective January 1, 1980, the words "state land commissioner," "land commissioner," "state land office" and "land office" shall mean the secretary of state.

Section 7-7-2, as added by Laws of 1984, ch. 488, § 90, and amended by Laws of 1985, ch. 455, § 14, Laws of 1986, ch. 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor," and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, ch. 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

§ 89-11-29. Institution of escheat proceedings.

The land commissioner shall have the power to discharge all the duties and to exercise all the powers herein imposed and conferred upon the county administrator or the sheriff, as the case may be, and he may institute and conduct to final conclusion all escheat proceedings authorized under this chapter, the same to be conducted in the manner herein prescribed.

HISTORY: Codes, 1906, § 1892; Hemingway's 1917, § 1535; 1930, § 1525; 1942, § 494.

Editor's Notes — Pursuant to Section 7-11-4, effective January 1, 1980, the words "state land commissioner," "land commissioner," "state land office" and "land office" shall mean the secretary of state.

Cross References — Duties and powers of land commissioner generally, see § 7-11-11.

Power of land commissioner to institute suits, see § 29-1-7.

JUDICIAL DECISIONS

1. In general.

Land commissioner could not maintain escheat proceeding to recover gasoline tax subject to be refunded to dealer, where gasoline purchasers were unknown. Moore v. Eastman Gardiner Lumber Co., 156 Miss. 359, 126 So. 44, 1930 Miss. LEXIS 183 (Miss. 1930).

§ 89-11-31. Sale of severed minerals which escheat to the state.

Any severed minerals which escheat to the state under the provisions of Section 89-11-1 et seq. shall, within six (6) months after the rendition of a final decree declaring the property escheated to the state, be sold at the door of the courthouse in the county, or in the judicial district in counties having more than one (1) such district, wherein the mineral estate is located. Provided, however, that no mineral interest shall be sold if it is still producing income. Notice and advertisement of such sale shall be published each week for three (3) consecutive weeks in a newspaper published in the county, if any, and if no newspaper be published in a county, then in a newspaper having general circulation in the county and in a newspaper having a general circulation within the state, the first such publication to appear at least fifteen (15) days prior to the date fixed in said notice for such sale. Each severed mineral interest shall be sold to the highest and best bidder, except that the owner of the surface estate in which the subject mineral estate was severed may, at such sale, match the highest and best bid and be allowed to purchase said severed mineral estate, upon showing proper proof of ownership of all or part of the surface estate. The sale shall be continued from day to day, except Sundays, between the hours of 8:30 a.m. and 4:30 p.m. until completed.

HISTORY: Laws, 1980, ch. 531, eff from and after July 1, 1980.

Cross References — Circumstances under which property shall escheat to the state, see § 89-11-1.

RESEARCH REFERENCES

ALR.

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

CHAPTER 12.

UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

Sec.

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89-12-55. Uniformity of interpretation.

Sec.
89-12-57. Provisions of chapter supplemental to Section 21-39-21.
89-12-59. Certain unclaimed United States savings bonds escheat to state; procedures.

§ 89-12-1. Short title.

This chapter shall be known and may be cited as the "Uniform Disposition of Unclaimed Property Act."

HISTORY: Laws, 1982, ch. 497, § 1, eff from and after July 1, 1982.

Cross References — Authority of municipalities with respect to lost, stolen, abandoned or misplaced personal property, see § 21-39-21.

Liquidated state trust company unclaimed property, see § 81-27-8.005 et seq.

Comparable Laws from other States — District of Columbia: D.C. Code §§ 41-101 through 41-142.

Florida: Fla. Stat. § 717.001 et seq.
Georgia: O.C.G.A. § 44-12-190 et seq.
Iowa: Iowa Code § 556.1 et seq.
Minnesota: Minn. Stat. §§ 345.31 through 345.60.
Missouri: §§ 447.500 through 447.595 R.S.Mo.
Nebraska: R.R.S. Neb. §§ 69-1301 et seq.
Nevada: Nev. Rev. Stat. Ann. § 120A.010 et seq.
Oregon: O.R.S. §§ 98.302 through 98.436.
Tennessee: Tenn. Code Ann. §§ 66-29-101 through 66-29-153.
Virginia: Va. Code Ann. § 55.1-2500 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Uniform Disposition of Unclaimed Property Act (Miss. Code Sections 89-12-1 et seq.) provides procedure for return of forfeited property where promptness requirement of Miss. Code Section 41-29-177 was not complied with, and for disposing of property where owners cannot be located. Magee, Jan. 8, 1993, A.G. Op. #92-0909.

RESEARCH REFERENCES

ALR.

Uniform Disposition of Unclaimed Property Act. 98 A.L.R.2d 304.

Am. Jur.

1 Am. Jur. 2d, Abandoned, Lost, and Unclaimed Property §§ 2 et seq.

Jurisdictions adopting Uniform Disposition of Unclaimed Property Act, see Am. Jur. 2d Desk Book, Item No. 124.

25 Am. Jur. Proof of Facts 2d 685, Abandonment of Tangible Personal Property.

§ 89-12-3. Definitions.

As used in this chapter, unless the context otherwise requires:

(a) "Banking organization" means any national or state bank, trust company, savings bank, land bank, private banker, or any similar organization which is engaged in business in this state.

(b) "Business association" means any corporation, joint stock company, business trust, partnership, or any association for business purposes of two (2) or more individuals, whether organized for profit or nonprofit, including, but not limited to, a banking organization, financial organization, life insurance corporation and utility.

(c) "Financial organization" means any federal or state savings and loan association, building and loan association, credit union, cooperative bank or investment company, or any similar organization which is engaged in business in this state.

(d) "Holder" means any person in possession of property subject to the provisions of this chapter belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to the provisions of this chapter.

(e) "Insurance corporation" means any association or corporation transacting in this state the business of insurance involving in any manner a person or property; however, this term does not include self-insured workers' compensation groups or associations comprised of members who have joint and several liability for the workers' compensation obligation of the other members.

(f) "Intangible personal property" includes, but is not limited to:

(i) Monies, checks, drafts, deposits, interest, dividends, and income;

(ii) Credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances; except future and prior dividends made by the workers' compensation groups or associations described in paragraph (e);

(iii) Monies deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions;

(iv) Amounts due and payable under the terms of insurance policies;

(v) Amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits;

(vi) Shares of corporate stock and other intangible ownership interests in business associations; and

(vii) Bonds, notes and other debt obligations.

(g) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to the provisions of this chapter, or his legal representative.

(h) "Apparent owner" means the person who appears from the records of the holder to be entitled to property held by the holder.

(i) "Person" means any individual, business association, government or political subdivision or agency, corporation, public authority, estate, trust, two (2) or more persons having a joint or common interest, or any other legal or commercial entity whether such person is acting in his own right or in a representative capacity.

(j) "Treasurer" means the State Treasurer of the State of Mississippi.

(k) "Utility" means any person who owns or operates in this state for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam or gas.

HISTORY: Laws, 1982, ch. 497, § 2; Laws, 1991, ch. 451, § 1; Laws, 2006, ch. 452, § 1, eff from and after July 1, 2006.

Cross References — State treasurer, generally, see §§ 7-9-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Money qualifies as "intangible personal property" under Miss. Code Section 89-12-3(f)(i). Magee, Jan. 8, 1993, A.G. Op. #92-0909.

§ 89-12-5. Presumed abandonment of property held or owing by bank or other business association.

(1) Subject to the provisions of Sections 89-12-17 and 89-12-19, the following property held or owing by a banking or financial organization or by a business association shall be presumed abandoned:

(a) Any demand, savings, or matured time deposit made in this state with a banking organization or financial organization, together with any interest or dividend thereon, excluding any charges that may have accrued, unless the owner has, within five (5) years:

(i) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(ii) Corresponded in writing with the banking organization or financial organization concerning the deposit; or

(iii) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization or financial organization.

(b) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, but not limited to, certificates of deposit, drafts, money orders and traveler's checks, that, with the exception of traveler's checks and money orders, has been outstanding for more than five (5) years from the date it was payable, or from the date of its issuance if payable on demand, or, in the case of traveler's checks, that has been outstanding for more than fifteen (15) years from the date of its issuance, or, in the case of money orders, that has been outstanding for more than seven (7) years from the date of its issuance, unless the owner has within five (5) years, or within fifteen (15) years in the case of traveler's checks or within seven (7) years in the case of money orders, corresponded in writing with the banking or financial organization or business association concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization or business association.

(2) Any certificate of deposit made in this state with a banking organization, together with an interest or dividend thereon, with a maturity date equal to or greater than ten (10) years shall be exempt from the time limit provisions of this chapter.

HISTORY: Laws, 1982, ch. 497, § 3; Laws, 1991, ch. 451, § 2, eff from and after July 1, 1991.

Cross References — Sums payable on money orders or traveler's checks presumed abandoned under this section as exempt from notice requirement, see § 89-12-27.

Payment or delivery of abandoned property to treasurer, see § 89-12-29.

RESEARCH REFERENCES

Am. Jur.

1 Am. Jur. 2d, Abandoned, Lost, and Unclaimed Property § 15.

1 Am. Jur. Pl & Pr Forms (Rev), Abandoned, Lost and Unclaimed Property, Form 1.1 (complaint, petition, or declaration-allegation-property as subject to abandonment); Form 1.2 (allegation-relinquishment of possession to property); Form 1.3 (allegation-intent to abandon property); Form 1.4 (allegation-intent to abandon property-as voluntary and unconditional).

Young, Trial Handbook for Mississippi Lawyers § 19:19.

CJS.

30A C.J.S., Escheat §§ 1, 3, 15.

§ 89-12-7. Presumed abandonment of unclaimed funds held or owing by life insurance corporation.

(1) Subject to the provisions of Section 89-12-17, funds held or owing by a life insurance corporation under any life or endowment insurance policy or annuity contract which has matured or terminated shall be presumed abandoned if unclaimed and unpaid for more than five (5) years after the funds became due and payable as established from the records of the corporation.

(2) If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it shall be presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation. This presumption is a presumption affecting the burden of proof.

(3) A life insurance policy not matured by actual proof of the death of the insured according to the records of the corporation shall be deemed to be matured and the proceeds due and payable if:

(a) The insured has attained, or would have attained if he were living, the limiting age under the mortality table on which the reserve is based;

(b) The policy was in force at the time the insured attained, or would have attained, the limiting age specified in paragraph (a) of this subsection; and

(c) Neither the insured nor any other person appearing to have an interest in the policy has, within the preceding five (5) years, according to the records of the corporation:

(i) Assigned, readjusted, or paid premiums on the policy,

(ii) Subjected the policy to loan, or

(iii) Corresponded in writing with the life insurance corporation concerning the policy.

(4) Any funds otherwise payable according to the records of the corporation shall be deemed due and payable although the policy or contract has not been surrendered as required.

HISTORY: Laws, 1982, ch. 497, § 4; Laws, 1991, ch. 451, § 3, eff from and after July 1, 1991.

Cross References — Regulation of the insurance industry, generally, see §§ 83-1-1 et seq.

Recovery by another state of property paid or delivered to treasurer under this chapter, see § 89-12-21.

RESEARCH REFERENCES

Am. Jur.

1 Am. Jur. 2d, Abandoned, Lost, and Unclaimed Property § 17.

1 Am. Jur. Pl & Pr Forms (Rev), Abandoned, Lost and Unclaimed Property, Form 1.1 (complaint, petition, or declaration-allegation-property as subject to abandonment); Form 1.2 (allegation-relinquishment of possession to property); Form 1.3 (allegation-intent to abandon property); Form 1.4 (allegation-intent to abandon property-as voluntary and unconditional).

Young, Trial Handbook for Mississippi Lawyers § 19:19.

CJS.

30A C.J.S., Escheat §§ 1, 3, 15.

§ 89-12-9. Presumed abandonment of funds held or owing by utility.

Subject to the provisions of Section 89-12-17 of this chapter, the following funds held or owing by any utility shall be presumed abandoned:

(a) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than five (5) years after the termination of the services for which the deposit or advance payment was made.

(b) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deduction, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than five (5) years after the date it became payable in accordance with the final determination or order providing for the refund.

HISTORY: Laws, 1982, ch. 497, § 5; Laws, 1991, ch. 451, § 4, eff from and after July 1, 1991.

Cross References — Regulation of public utilities, generally, see §§ 77-1-1 et seq.

RESEARCH REFERENCES

Am. Jur.

1 Am. Jur. 2d, Abandoned, Lost, and Unclaimed Property § 18.

1 Am. Jur. Pl & Pr Forms (Rev), Abandoned, Lost and Unclaimed Property, Form 1.1 (complaint, petition, or declaration-allegation-property as subject to abandonment); Form 1.2 (allegation-relinquishment of possession to property); Form 1.3 (allegation-intent to abandon property); Form 1.4 (allegation-intent to abandon property-as voluntary and unconditional).

CJS.

30A C.J.S., Escheat §§ 1, 3, 15.

§ 89-12-11. Presumed abandonment of dividend, interest and the like held or owing by business association for or to shareholder, bondholder and the like.

(1) Subject to the provisions of Section 89-12-17, and except as otherwise provided in subsections (2) and (5) of this section, stock or other intangible ownership interest in a business association which is held by the association, the existence of which is evidenced by records available to the association, is presumed abandoned if a dividend, distribution or other sum payable as a result of the interest has remained unclaimed by the owner for five (5) years and during that time the owner has not:

(a) Communicated in writing with the association regarding the interest or a dividend, distribution or other sum payable as a result of the interest; or

(b) Otherwise communicated with the association regarding the interest or a dividend, distribution or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association.

(2) At the expiration of a five-year period following the failure of the owner to claim a dividend, distribution or other sum payable to the owner as a result of the interest, the interest is not presumed abandoned unless there have been at least five (5) dividends, distributions or other sums paid during the period, none of which has been claimed by the owner. If five (5) dividends, distributions or other sums are paid during the five-year period, the time period leading to a presumption of abandonment commences on the date that payment of the first unclaimed dividend, distribution or other sum became due and payable. If five (5) dividends, distributions or other sums are not paid during the presumptive period, the period continues to run until there have been five (5) dividends, distributions or other sums that have not been claimed by the owner.

(3) The running of the five-year period of abandonment ceases immediately upon the occurrence of a communication as described in subsection (1) of this section. If any future dividend, distribution or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back to the time a subsequent dividend, distribution or other sum became due and payable.

(4) At the time an interest is presumed abandoned under this section, any dividend, distribution or other sum then held for or owing to the owner as a result of the interest, and not previously abandoned, is presumed abandoned.

(5) This section does not apply to any stock or other intangible ownership of interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions or other sums payable as a result of the interest unless the records available to the State Treasurer show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within five (5) years communicated in any manner described in subsection (1) of this section.

(6) Notwithstanding anything in this section or any other section in this chapter to the contrary, the property presumed abandoned under this chapter shall not include capital credits or patronage refunds offered for payment by nonprofit cooperative electric power associations, nonprofit cooperative water and sewer associations, or nonprofit agricultural cooperative marketing associations, but rather such unclaimed funds shall be used for the benefit of the general membership of such associations.

HISTORY: Laws, 1982, ch. 497, § 6; Laws, 1991, ch. 451, § 5; Laws, 1997, ch. 415, § 1, eff from and after July 1, 1997.

Cross References — Regulation of corporations, associations and partnerships, generally, see §§ 79-1-1 et seq.

Sale of securities listed on stock exchange, see § 89-12-30.

Relief from liability upon payment or delivery of abandoned property to treasurer, see § 89-12-31.

RESEARCH REFERENCES

Am. Jur.

1 Am. Jur. 2d, Abandoned, Lost, and Unclaimed Property § 16.

1 Am. Jur. Pl & Pr Forms (Rev), Abandoned, Lost and Unclaimed Property, Form 1.1 (complaint, petition, or declaration-allegation-property as subject to abandonment); Form 1.2 (allegation-relinquishment of possession to property); Form 1.3 (allegation-intent to abandon property); Form 1.4 (allegation-intent to abandon property-as voluntary and unconditional).

Young, Trial Handbook for Mississippi Lawyers § 19:19.

CJS.

30A C.J.S., Escheat §§ 1, 3, 15.

§ 89-12-13. Presumed abandonment of intangible personal property held by fiduciary.

Subject to the provisions of Section 89-12-17, any intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person shall be presumed abandoned unless the owner has, within five (5) years after it became payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary.

HISTORY: Laws, 1982, ch. 497, § 7; Laws, 1991, ch. 451, § 6, eff from and after July 1, 1991.

RESEARCH REFERENCES

Am. Jur.

Young, Trial Handbook for Mississippi Lawyers § 19:19.

CJS.

30A C.J.S., Escheat §§ 1, 3, 15.

§ 89-12-14. Presumed abandonment of intangible property held by business association, federal, state or local government or governmental subdivision, agency or entity.

(1) All intangible property, including, but not limited to, any interest, dividend, or other earnings thereon, less any lawful charges, held by a business association, federal, state or local government or governmental subdivision, agency or entity, or any other person or entity, regardless of where the holder may be found, if the owner has not claimed or corresponded in writing concerning the property within five (5) years after the date prescribed for payment or delivery, is presumed abandoned and subject to the custody of this state as unclaimed property if:

(a) The last known address of the owner is unknown; and

(b) The person or entity originating or issuing the intangible property is this state or any political subdivision of this state, or is incorporated, organized, created or otherwise located in this state.

(2) The provisions of subsection (1) of this section shall not apply to property that is or may be presumed abandoned and subject to the custody of this state pursuant to any other provision of law containing a dormancy period different than that prescribed in subsection (1) of this section.

(3) The provisions of subsection (1) of this section shall apply to all property held on July 1, 1991, or at any time thereafter, regardless of when such property became or becomes presumptively abandoned.

(4) Insofar and only insofar as funds reflected by the cancellation of State of Mississippi warrants are unclaimed and presumed abandoned, the State Treasurer shall transfer such funds out of the Abandoned Property Fund established by Section 89-12-37 to the original fund source after the expiration of five (5) years as required herein.

HISTORY: Laws, 1991, ch. 451, § 7; Laws, 1992, ch. 408, § 1; Laws, 2000, ch. 501, § 2, eff from and after passage (approved Apr. 27, 2000).

OPINIONS OF THE ATTORNEY GENERAL

Unclaimed and unidentifiable funds in district attorney's pre-trial intervention account are unclaimed property to be disposed of under statute, involving report to State Treasurer, publication of names of persons appearing to own property, and payment of property to State Treasurer. Pacific, Dec. 16, 1992, A.G. Op. #92-0912.

Money or intangible property, which was subject of forfeiture proceedings which did not take place promptly, could be presumed "abandoned" under Miss. Code Section 89-12-14. Magee, Jan. 8, 1993, A.G. Op. #92-0909.

RESEARCH REFERENCES

Am. Jur.

1 Am. Jur. Pl & Pr Forms (Rev), Abandoned, Lost and Unclaimed Property, Form 1.1 (complaint, petition, or declaration-allegation-property as subject to abandonment); Form 1.2 (allegation-relinquishment of possession to property); Form 1.3 (allegation-intent to abandon property); Form 1.4 (allegation-intent to abandon property-as voluntary and unconditional).

§ 89-12-15. Presumed abandonment of intangible personal property held in ordinary course of holder's business.

All intangible personal property not otherwise covered by the provisions of this chapter, including any income or increment thereon and deducting any charges that may have accrued, that is held in the ordinary course of the holder's business and has remained unclaimed by the owner for more than five (5) years after it became payable or distributable shall be presumed abandoned.

HISTORY: Laws, 1982, ch. 497, § 8; Laws, 1991, ch. 451, § 8, eff from and after July 1, 1991.

RESEARCH REFERENCES

Am. Jur.

1 Am. Jur. Pl & Pr Forms (Rev), Abandoned, Lost and Unclaimed Property, Form 1.1 (complaint, petition, or declaration-allegation-property as subject to abandonment); Form 1.2 (allegation-relinquishment of possession to property); Form 1.3 (allegation-intent to abandon property); Form 1.4 (allegation-intent to abandon property-as voluntary and unconditional).

Young, Trial Handbook for Mississippi Lawyers § 19:19.

CJS.

30A C.J.S., Escheat §§ 1, 3, 15.

§ 89-12-16. Presumed abandonment of tangible personal property or intangible personal property held by federal government, federal agency, or any officer or appointee thereof.

(1) All tangible personal property or intangible personal property, including choses in action in amounts certain, and all debts owed or entrusted funds or other property held by the federal government, or any federal agency, or any officer, or appointee thereof, shall be presumed abandoned in this state if the last known address of the owner of the property is in this state and the property has remained unclaimed for five (5) years.

(2) This section shall apply to all abandoned property held by the federal government, or any federal agency, or any officer, or any appointee thereof, on

July 1, 1991, or at any time thereafter, regardless of when such property became presumptively abandoned.

HISTORY: Laws, 1991, ch. 451, § 9, eff from and after July 1, 1991.

RESEARCH REFERENCES

Am. Jur.

1 Am. Jur. Pl & Pr Forms (Rev), Abandoned, Lost and Unclaimed Property, Form 1.1 (complaint, petition, or declaration-allegation-property as subject to abandonment); Form 1.2 (allegation-relinquishment of possession to property); Form 1.3 (allegation-intent to abandon property); Form 1.4 (allegation-intent to abandon property-as voluntary and unconditional).

§ 89-12-17. Additional conditions for presumption of abandonment of intangible personal property.

Unless otherwise provided by statute of this state, intangible personal property shall be presumed abandoned under the provisions of this chapter if the conditions for presumption of abandonment stated in the provisions of this chapter exist, and if:

(a) The last-known address of the apparent owner is in this state as shown on the records of the holder; or

(b) No address of the apparent owner appears on the records of the holder, and

(i) The last-known address of the apparent owner is in this state, or

(ii) The holder is domiciled in this state and has not previously paid the property to the state of the last-known address of the apparent owner, or

(iii) The holder is a government or governmental subdivision or agency of this state and has not previously paid the property to the state of the last-known address of the apparent owner; or

(c) The last-known address of the apparent owner, as shown on the records of the holder, is in a state designated by regulation adopted by the treasurer as a state that does not provide by law for presumption of abandonment or escheat of such property and the holder is

(i) Domiciled in this state, or

(ii) A government or governmental subdivision or agency of this state; or

(d) The last-known address of the apparent owner, as shown on the records of the holder, is in a foreign nation and the holder is

(i) Domiciled in this state, or

(ii) A government or governmental subdivision or agency of this state.

HISTORY: Laws, 1982, ch. 497, § 9, eff from and after July 1, 1982.

Cross References — Application of this section to presumed abandonment of property held or owing by bank or other business association, see § 89-12-5.

Application of this section to presumed abandonment of unclaimed funds held or owing by life insurance corporation, see § 89-12-7.

Application of this section to presumed abandonment of funds held or owing by utility, see § 89-12-9.

Application of this section to presumed abandonment of dividend, interest and the like held or owing by business association for stockholder, bondholder and the like, see § 89-12-11.

Application of this section to presumed abandonment of intangible personal property held by fiduciary, see § 89-12-13.

Recovery by another state of property paid or delivered to treasurer under this chapter, see § 89-12-21.

RESEARCH REFERENCES

Am. Jur.

1 Am. Jur. Pl & Pr Forms (Rev), Abandoned, Lost and Unclaimed Property, Form 1.1 (complaint, petition, or declaration-allegation-property as subject to abandonment); Form 1.2 (allegation-relinquishment of possession to property); Form 1.3 (allegation-intent to abandon property); Form 1.4 (allegation-intent to abandon property-as voluntary and unconditional).

§ 89-12-19. Additional conditions for presumption of abandonment of sum payable on money order, traveler's check and the like.

Any sum payable on a money order, traveler's check, or other similar written instrument (other than a third-party bank check) on which a business association is directly liable shall be presumed abandoned under the provisions of this chapter if the conditions for presumption of abandonment stated in Section 89-12-5 exist and if:

(a) The books and records of such business association show that such money order, traveler's check, or similar written instrument was purchased in this state;

(b) The business association has its principal place of business in this state, and the books and records of the business association do not show the state in which such money order, traveler's check, or similar written instrument was purchased; or

(c) The business association has its principal place of business in this state, the books and records of the business association show the state in which such money order, traveler's check, or similar written instrument was purchased, and the laws of the state of purchase do not provide for presumption of abandonment or escheat of the sum payable on such instrument.

HISTORY: Laws, 1982, ch. 497, § 10, eff from and after July 1, 1982.

Cross References — Recovery by another state of property paid or delivered to treasurer under this chapter, see § 89-12-21.

RESEARCH REFERENCES

Am. Jur.

1 Am. Jur. Pl & Pr Forms (Rev), Abandoned, Lost and Unclaimed Property, Form 1.1 (complaint, petition, or declaration-allegation-property as subject to abandonment); Form 1.2 (allegation-relinquishment of possession to property); Form 1.3 (allegation-intent to abandon property); Form 1.4 (allegation-intent to abandon property-as voluntary and unconditional).

§ 89-12-21. Recovery by another state of property paid or delivered to treasurer under this chapter.

(1) At any time after property has been paid or delivered to the treasurer under the provisions of this chapter, another state shall be entitled to recover the property if:

(a) The property was presumed abandoned in this state under the provisions of paragraph (b) of Section 89-12-17 because no address of the apparent owner of the property appeared on the records of the holder when the property was presumed abandoned under the provisions of this chapter, the last-known address of the apparent owner was, in fact, in such other state, and, under the laws of that state, the property was presumed abandoned in or escheated to that state;

(b) The last-known address of the apparent owner of the property appearing on the records of the holder is in such other state and, under the laws of that state, the property was presumed abandoned in or escheated to that state;

(c) The property is the sum payable on a traveler's check, money order, or other similar instrument that was presumed abandoned in this state under the provisions of Section 89-12-19, the traveler's check, money order or other similar instrument was, in fact, purchased in such other state, and, under the laws of that state, the property was presumed abandoned in or escheated to that state; or

(d) The property is funds held or owing by a life insurance corporation that was presumed abandoned in this state by application of the presumption provided by subsection (2) of Section 89-12-7, the last-known address of the person entitled to the funds was, in fact, in such other state, and, under the laws of that state, the property was presumed abandoned in or escheated to that state.

(2) The claim of another state under this section to recover property shall be presented in writing to the treasurer, who shall consider the claim within ninety (90) days after it is presented. He may hold a hearing and receive evidence on such claim. He shall allow the claim if he determines that the other state is entitled to the property.

(3) Paragraphs (a) and (b) of subsection (1) shall not apply to property described in paragraph (c) or (d) of that subsection.

HISTORY: Laws, 1982, ch. 497, § 11, eff from and after July 1, 1982.

§ 89-12-23. Report to treasurer by holder of property presumed abandoned.

(1) Every person holding funds or other intangible personal property presumed abandoned under the provisions of this chapter shall report to the Treasurer with respect to the property as hereinafter provided.

(2) The report shall be verified, shall be on a form prescribed or approved by the Treasurer, and shall include:

(a) Except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of more than One Hundred Dollars ($100.00) presumed abandoned under the provisions of this chapter;

(b) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(c) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under One Hundred Dollars ($100.00) each may be reported in aggregate;

(d) Except for any property reported in the aggregate, the date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(e) Other information which the Treasurer prescribes by regulation as necessary for the administration of this chapter.

(3) If the person holding property presumed abandoned under the provisions of this chapter is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior-known names and addresses of each holder of the property.

(4) The report shall be filed annually through 1984, and reports shall be filed every third year thereafter. The report shall be filed before November 1 of each year in which a report is required as of June 30 next preceding. The Treasurer may postpone the reporting date upon written request by any person required to file a report.

(5) If the holder of property presumed abandoned under the provisions of this chapter knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the required report, endeavor to communicate with the owner and take reasonable steps to prevent abandonment from being presumed. The mailing of notice to the last-known address of the owner by the holder shall constitute compliance with this subsection and no further act on the part of the holder shall be necessary.

(6) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(7) Every person who is requested in writing by the Treasurer shall file a report stating that such person is not holding any abandoned property which is reportable pursuant to the provisions of this section.

(8) The initial report filed under this chapter shall include all items of property that would have been presumed abandoned if this chapter had been in effect since July 1, 1969, and all such property shall be subject to the provisions of this chapter.

HISTORY: Laws, 1982, ch. 497, § 12; Laws, 1991, ch. 451, § 10, eff from and after July 1, 1991.

Cross References — Mailed notice and published notice of names of persons appearing to own property presumed abandoned, see § 89-12-27.

Payment or delivery of abandoned property to treasurer, see § 89-12-29.

Discretion of treasurer to decline to receive property presumed abandoned, see § 89-12-43.

RESEARCH REFERENCES

CJS.

30A C.J.S., Escheat §§ 1-3, 15.

§ 89-12-25. Agreements to locate property presumed abandoned; prohibitions; approval.

(1) It is unlawful for a person to seek to receive from another person or contract with a person for a fee or compensation for locating property which he knows has been reported, paid or delivered to the Treasurer pursuant to the provisions of this chapter prior to seven (7) months after the date of payment or delivery of the property by the holder to the Treasurer as required by Section 89-12-29.

(2) The Treasurer shall approve all contracts entered into between two (2) or more persons whereby one (1) party to the contract agrees to furnish the other party with information concerning property reported to the Treasurer under this chapter. The agreed upon fee in such contracts shall not exceed ten percent (10%) of the value of the recoverable property or Fifty Dollars ($50.00), whichever is greater. Nothing in this section shall be construed to prevent an owner from asserting at any time that an agreement to locate property is based upon an excessive or unjust consideration.

HISTORY: Laws, 1982, ch. 497, § 13; Laws, 1991, ch. 451, § 11, eff from and after July 1, 1991.

§ 89-12-27. Published notice of names of persons appearing to own property presumed abandoned; mailed notice.

(1) Within one hundred twenty (120) days from the filing of the report required by Section 89-12-23, the Treasurer shall cause notice to be published in a newspaper having general circulation in the county of this state in which is located the last-known address of any person to be named in the notice. If no

address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his or her principal place of business in this state.

(2) The published notice shall be entitled "Notice of names of persons appearing to be owners of abandoned property," and shall contain:

(a) The names in alphabetical order and last-known addresses, if any, of persons listed in the report and entitled to notice in the county as specified in subsection (1) of this section;

(b) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the Treasurer; and

(c) A statement that any person claiming an interest in the property must file a proof of claim with the Treasurer as set forth in Section 89-12-39.

(3) The Treasurer shall not be required to publish in the notice any item of less than One Hundred Dollars ($100.00) unless he deems publication to be in the public interest.

(4) Within one hundred twenty (120) days from the receipt of the report required by Section 89-12-23, the Treasurer shall mail a notice to each person having an address listed therein who appears to be entitled to property valued at One Hundred Dollars ($100.00) or more and presumed abandoned under the provisions of this chapter.

(5) The mailed notice shall contain:

(a) A statement that property is being held to which the addressee appears entitled;

(b) A statement that any person claiming an interest in the property must file a proof of claim with the Treasurer as set forth in Section 89-12-39.

(6) This section shall not be applicable to sums payable on traveler's checks or money orders presumed abandoned under the provisions of Section 89-12-5.

HISTORY: Laws, 1982, ch. 497, § 14; Laws, 1983, ch. 478; Laws, 1993, ch. 460, § 1, eff from and after July 1, 1993.

Cross References — Procedures for disposition of funds of medicaid patients in long-term care facilities who die intestate and without heirs, see § 43-13-120.

Payment or delivery of abandoned property to treasurer, see § 89-12-29.

RESEARCH REFERENCES

Am. Jur.

1 Am. Jur. 2d, Abandoned, Lost, and Unclaimed Property § 48.

1 Am. Jur. Pl & Pr Forms (Rev), Abandoned, Lost, and Unclaimed Property, Forms 11 et seq. (rights and duties of finder).

1 Am. Jur. Pl & Pr Forms (Rev), Abandoned, Lost, and Unclaimed Property, Form 41 (complaint, petition, or declaration-against finder-for failure to give notice of finding).

9 Am. Jur. Pl & Pr Forms (Rev), Escheat, Form 4 (notice of names of apparent owners of unclaimed bank deposits).

§ 89-12-29. Payment or delivery of abandoned property to treasurer.

(1) Except as otherwise provided in subsection (2) of this section, a person who is required to file a report under Section 89-12-23 shall pay or deliver to the Treasurer all abandoned property together with the report.

(2) If the owner established the right to receive the abandoned property to the satisfaction of the holder before the property has been delivered, or it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property to the Treasurer, and the property is no longer presumed abandoned.

(3) The holder of an interest under Section 89-12-11 shall deliver a duplicate certificate or other evidence of ownership, if the holder does not issue certificates of ownership, to the Treasurer. Upon delivery of a duplicate certificate to the Treasurer, the holder and any transfer agent, registrar or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate, is relieved of all liability of every kind in accordance with the provisions of Section 89-12-31 to every person, including any person acquiring the original certificate of the duplicate of the certificate issued to the Treasurer, for any losses or damages resulting to any person by the issuance and delivery to the Treasurer of the duplicate certificate.

HISTORY: Laws, 1982, ch. 497, § 15; Laws, 1993, ch. 460, § 2, eff from and after July 1, 1993.

§ 89-12-30. Sale of securities listed on stock exchange.

(1) Securities listed on an established stock exchange must be sold at prices prevailing at the time of sale on the exchange. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the Treasurer considers advisable.

(2) Unless the Treasurer considers it to be in the best interests of the state to do otherwise, all securities presumed abandoned under Section 89-12-11 and delivered to the Treasurer must be held for at least three (3) years before they may be sold. If the Treasurer sells any securities delivered pursuant to Section 89-12-11 before the expiration of the three-year period, any person making a claim pursuant to this chapter before the end of that time period is entitled to either the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever amount is greater. A person making a claim under this chapter after the expiration of the time period is entitled to receive either the securities delivered to the Treasurer by the holder, if they still remain in the hands of the Treasurer, or the proceeds received from sale, but no person has any claim under this chapter against the state, the holder, any transfer agent, registrar or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the Treasurer.

(3) The purchaser of property at any sale conducted by the Treasurer pursuant to this chapter takes the property free of all claims of the owner or

previous holder thereof and of all persons claiming through or under them. The Treasurer shall execute all documents necessary to complete the transfer of ownership.

HISTORY: Laws, 1991, ch. 451, § 14, eff from and after July 1, 1991.

§ 89-12-31. Holder relieved from liability upon payment or delivery of abandoned property to treasurer.

(1) Upon the payment or delivery of property to the Treasurer, the state assumes custody and responsibility for the safekeeping of the property. A person who pays or delivers property to the Treasurer in good faith is relieved of all liability for any claim then existing or which may arise or be made in respect to the property.

(2) If the holder pays or delivers property to the Treasurer in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the Treasurer, upon written notice of claim, shall defend the holder against any liability on the claim.

(3) The holder of an interest under Section 89-12-11 shall deliver a duplicate certificate or other evidence of ownership if the holder does not issue certificate of ownership to the administrator.

(4) Any holder who has paid moneys to the Treasurer pursuant to the provisions of this chapter may make payment to any person appearing to such holder to be entitled thereto and, upon proof of such payment and proof that the payee was entitled thereto, the Treasurer shall forthwith reimburse the holder for the payment.

HISTORY: Laws, 1982, ch. 497, § 16; Laws, 1991, ch. 451, § 12, eff from and after July 1, 1991.

RESEARCH REFERENCES

Am. Jur.

1 Am. Jur. Pl & Pr Forms (Rev), Abandoned, Lost, and Unclaimed Property, Form 31 (petition or application-by finder-to deliver unclaimed or abandoned property to public officer and relieve finder of responsibility to owner).

§ 89-12-33. Owner entitled to further income or increments.

When property other than money is paid or delivered to the Treasurer under this chapter, the owner is entitled to receive from the Treasurer any dividends, interest or other increments realized or accruing on the property at or before liquidation or conversion into money.

HISTORY: Laws, 1982, ch. 497, § 17; Laws, 1991, ch. 451, § 13, eff from and after July 1, 1991.

§ 89-12-35. Effect of expiration of period of limitation.

The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by the provisions of this chapter, or to pay or deliver abandoned property to the treasurer.

HISTORY: Laws, 1982, ch. 497, § 18, eff from and after July 1, 1982.

JUDICIAL DECISIONS

1. In general.

Section 89-12-35 of the Uniform Disposition of Unclaimed Property Act did not apply retroactively to lift the bar of the statute of limitations regarding the reporting and payment of funds held by an insurance company as "abandoned property." Cole v. National Life Ins. Co., 549 So. 2d 1301, 1989 Miss. LEXIS 428 (Miss. 1989).

§ 89-12-37. Abandoned property fund; abandoned property claims payment fund.

(1) All funds received under the provisions of this chapter shall forthwith be deposited by the Treasurer in a special fund hereby established in the State Treasury to be designated the "Abandoned Property Fund," except that the Treasurer shall deposit in a separate special fund hereby established in the State Treasury to be designated the "Abandoned Property Claims Payment Fund" an amount not exceeding One Hundred Fifty Thousand Dollars ($150,000.00) from which he shall make prompt payment of claims duly allowed by him as hereinafter provided. Before making the deposits in either special fund, he shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and the name and last known address of each insured person or annuitant and, with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation and the amount due. The record shall be available for public inspection at all reasonable business hours.

(2) There is created within the Abandoned Property Fund in the State Treasury a trust to be known as the Historic Properties Financing Fund, which shall be used as provided in this section. On July 1, 1999, Ten Million Dollars ($10,000,000.00) in the Abandoned Property Fund shall be set aside and placed in the Historic Properties Financing Fund created herein. The principal of the Historic Properties Financing Fund shall remain inviolate within the Abandoned Property Fund, and shall be invested in the same manner as the remainder of the Abandoned Property Fund. The interest and income earned from the investment of the principal of the Historic Properties Financing Fund shall be transferred quarterly to the Mississippi Landmark Grant Program account within the Historic Properties Trust Fund created under Section 39-5-23. The transferred money shall be utilized by the Department of Archives and History for the purposes as specified in Section 39-5-23(3).

(3) Notwithstanding subsections (1) and (2) of this section, the funds reflected by the cancellation of State of Mississippi warrants that constitute part of the Abandoned Property Fund shall be transferred by the State Treasurer back to the original fund source if unclaimed by the owner within the time specified in Section 7-7-42.

HISTORY: Laws, 1982, ch. 497, § 19; Laws, 1999, ch. 486, § 2; Laws, 2000, ch. 501, § 3, eff from and after passage (approved Apr. 27, 2000).

§ 89-12-39. Claim for abandoned property paid or delivered to treasurer; determination; interest.

(1) Any person claiming an interest in any property delivered to the state under the provisions of this chapter may file a claim on the form prescribed by the Treasurer.

(2) The Treasurer shall consider any claim filed under the provisions of subsection (1) of this section, and may hold a hearing and receive evidence concerning it. If a hearing is held, he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

(3) If the validity of a claim shall be determined in favor of the claimant, the Treasurer shall pay over to the claimant only that amount which the Treasurer actually received, without deduction for costs of notices or for service charges, together with interest at the rate of one-twelfth of one percent (1/1$_2$ of 1%) per month from the time when it was received by the Treasurer to the time when it was paid by him to the claimant. However, if the property claimed was interest bearing to the owner on the date of surrender by the holder, then the Treasurer shall instead add interest at a rate not to exceed five-twelfths of one percent (5/1$_2$ of 1%) per month or the lesser current market rate. The interest on interest-bearing property shall begin to accumulate on the date that the property is delivered to the Treasurer and shall cease on the earlier of the expiration of fifteen (15) years following delivery or the date on which payment is made to the owner. No interest on the interest-bearing property shall be payable for any period prior to July 1, 1982. Any holder who pays to the owner property which has been delivered to the state and which, if claimed from the Treasurer, would be subject to the provisions of this section as interest-bearing property, shall add interest as provided in this section. The added interest shall be repaid to the holder by the Treasurer in the same manner as the principal.

HISTORY: Laws, 1982, ch. 497, § 20; Laws, 1993, ch. 460, § 3, eff from and after July 1, 1993.

RESEARCH REFERENCES

Am. Jur.

1 Am. Jur. 2d, Abandoned, Lost, and Unclaimed Property § 36.

9 Am. Jur. Pl & Pr Forms (Rev), Escheat, Forms 31 et seq. (administrative proceedings for recovery of property).

CJS.
30A C.J.S., Escheat § 7, 8.

§ 89-12-41. Judicial review of action of treasurer upon claim.

Any person aggrieved by a decision of the treasurer or as to whose claim the treasurer has failed to act within ninety (90) days after the filing of the claim, may commence an action in the Circuit Court of the First Judicial District of Hinds County, Mississippi, to establish his claim. The proceeding shall be brought within thirty (30) days after the decision of the treasurer or within sixty (60) days from the filing of the claim if the treasurer fails to act.

HISTORY: Laws, 1982, ch. 497, § 21, eff from and after July 1, 1982.

RESEARCH REFERENCES

Am. Jur.
1 Am. Jur. Pl & Pr Forms (Rev), Abandoned, Lost, and Unclaimed Property, Form 1 (complaint, petition, or declaration for determination of claims to abandoned personal property); Form 4 (instruction to jury as to elements of abandonment).

9 Am. Jur. Pl & Pr Forms (Rev), Escheat, Forms 42 et seq. (judicial proceedings for recovery of property).

§ 89-12-43. Treasurer may decline to receive property presumed abandoned.

The treasurer, after receiving reports of property deemed abandoned pursuant to the provisions of this chapter, may decline to receive any property reported which he deems to have a value less than the cost of giving notice, or he may, if he deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within thirty (30) days after filing the report required under Section 89-12-23, the treasurer shall be deemed to have elected to receive the custody of the property.

HISTORY: Laws, 1982, ch. 497, § 22, eff from and after July 1, 1982.

§ 89-12-45. Examination of records by treasurer or designated regulatory authority.

(1) The Treasurer may at reasonable times and upon reasonable notice examine the records of any person to determine if such person has complied with the provisions of this chapter. The Treasurer may designate the Commissioner of Banking and Consumer Finance or other appropriate regulatory authority to examine the records of institutions of regulated industries to determine if such institutions have complied with the provisions of this chapter.

(2) If, in connection with such examination, property which should have been reported pursuant to the provisions of this chapter is discovered, the

holder shall pay a per diem rate equal to actual costs per examination as the cost of conducting the examination.

(3) If any person refuses to permit the examination provided in this section or to deliver property to the Treasurer as required under the provisions of this chapter, the Treasurer shall bring an action in a court of appropriate jurisdiction to compel such examination or to enforce such delivery.

HISTORY: Laws, 1982, ch. 497, § 23; Laws, 1994, ch. 622, § 161, eff from and after July 1, 1994.

§ 89-12-47. Penalties for failure to make reports or to pay or deliver abandoned property.

(1) Any person who willfully fails to render any report or perform other duties required under the provisions of this chapter shall, upon conviction thereof, be punished by a fine of Five Dollars ($5.00) for each day the report is withheld, but not more than One Hundred Dollars ($100.00).

(2) Any person who willfully refuses to pay or deliver abandoned property to the Treasurer as required under the provisions of this chapter shall, upon conviction thereof, be punished by a fine of not less than Five Dollars ($5.00) nor more than One Hundred Dollars ($100.00), or imprisonment for not more than six (6) months, or both, in the discretion of the court.

(3) In addition to any damages, penalties, or fines for which a person may be liable under any other provision of law, any person who fails to report, pay or deliver abandoned property within the time prescribed by the provisions of this chapter shall pay to the Treasurer interest at the rate of one percent (1%) per month on the property or the value thereof from the date the property should have been paid or delivered, but in no event prior to July 1, 1982; except that if the failure to report, pay or deliver is the result of mistake or other good cause shown, the Treasurer may reduce the rate of interest or waive the interest payable thereon.

HISTORY: Laws, 1982, ch. 497, § 24; Laws, 1993, ch. 460, § 4, eff from and after July 1, 1993.

§ 89-12-49. Rules and regulations.

The treasurer is hereby authorized to adopt necessary rules and regulations to carry out the provisions of this chapter.

HISTORY: Laws, 1982, ch. 497, § 25, eff from and after July 1, 1982.

RESEARCH REFERENCES

Am. Jur.

25 Am. Jur. Proof of Facts 2d 685, Abandonment of Tangible Personal Property.

§ 89-12-51. Repealed.

Repealed by Laws, 1992, ch. 408, § 2, eff from and after July 1, 1992.
§ 89-12-51. [Laws, 1982, ch. 497, § 27; Laws 1985, ch. 403, § 2]

Editor's Notes — Former Section 89-12-51 provided that the Uniform Disposition of Unclaimed Property Act (§§ 89-12-1 et seq.) did not apply to property presumed abandoned under the laws of another state before July 1, 1982.

§ 89-12-53. Chapter inapplicable to property of minor or incompetent.

The provisions of this chapter shall not apply to any person who is the owner of any type of property described herein where such person is either a minor or mentally incompetent, nor to any person who is the owner of any type of property described herein which is subject to the provisions of Section 43-13-120.

HISTORY: Laws, 1982, ch. 497, § 27; Laws, 1985, ch. 403, § 2, eff from and after passage (approved March 25, 1985).

§ 89-12-55. Uniformity of interpretation.

This chapter shall be so construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

HISTORY: Laws, 1982, ch. 497, § 28, eff from and after July 1, 1982.

§ 89-12-57. Provisions of chapter supplemental to Section 21-39-21.

This chapter shall not be construed as repealing the provisions of Section 21-39-21, but shall be additional and supplemental to those provisions.

HISTORY: Laws, 1982, ch. 497, § 29, eff from and after July 1, 1982.

§ 89-12-59. Certain unclaimed United States savings bonds escheat to state; procedures.

(1) Notwithstanding the provisions of any other section of law, United States savings bonds which are unclaimed property and subject to the provisions of this chapter shall escheat to the State of Mississippi three (3) years after becoming unclaimed property by virtue of the provisions of this chapter, and all property rights and legal title to and ownership of such United States savings bonds or proceeds from such bonds, including all rights, powers and privileges of survivorship of any owner, co-owner or beneficiary, shall vest solely in the State of Mississippi according to the procedure set forth in subsections (2) through (5) of this section.

(2) Within one hundred eighty (180) days after the three (3) years prescribed in subsection (1) of this section, if no claim has been filed in

accordance with the provisions of this chapter for such United States savings bonds, the State Treasurer shall commence a civil action in the Circuit Court of the First Judicial District of Hinds County for a determination that such United States savings bonds shall escheat to the State of Mississippi. The State Treasurer may postpone the bringing of such action until sufficient United States savings bonds have accumulated in the State Treasurer custody to justify the expense of such proceedings.

(3) If no person shall file a claim or appear at the hearing to substantiate a claim or where the court determines that a claimant is not entitled to the property claimed by such claimant, then the court, if satisfied by evidence that the State Treasurer has substantially complied with the laws of the State of Mississippi, shall enter a judgment that the subject United States savings bonds have escheated to the State of Mississippi, and all property rights and legal title to and ownership of such United States savings bonds or proceeds from such bonds, including all rights, powers and privileges of survivorship of any owner, co-owner or beneficiary, shall vest solely in the State of Mississippi.

(4) The State Treasurer shall redeem such United States savings bonds escheated to the State of Mississippi and the proceeds from such redemption of United States savings bonds shall be deposited in the State General Fund. The State Treasurer shall not deposit the proceeds from the redemption of the United States savings bonds in the Abandoned Property Fund or the Abandoned Property Claims Payment Fund in accordance with the provisions of Section 89-12-37.

(5) Any person making a claim for the United States savings bonds escheated to the State of Mississippi under this subsection, or for the proceeds from such bonds, may file a claim in accordance with the provisions of this chapter. Upon providing sufficient proof of the validity of such person's claim, the State Treasurer may pay such claim in accordance with the provisions of this chapter.

HISTORY: Laws, 2014, ch. 431, § 8, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal statutory reference by substituting "this chapter" for "Section 89-12-57 et seq." and making related punctuation changes throughout the section. The Joint Committee ratified the correction at its July 24, 2014, meeting.

Editor's Notes — This section was added by Section 8, Laws of 2014, ch. 431, effective from and after July 1, 2015. The effective date of Laws of 2014, ch. 431, was subsequently amended by Laws of 2014, ch. 477, § 7, which provides:

"SECTION 7. Section 9 of Senate Bill No. 2796, 2014 Regular Session [Chapter 431], is amended as follows:

"Section 9. Section 8 of this act shall take effect and be in force from and after July 1, 2014, and the remaining sections of this act shall take effect and be in force from and after July 1, 2015."

CHAPTER 13.

PARTY FENCES

Sec.

89-13-1. Adjoining owners to contribute.
89-13-3. Enforcement of contribution.
89-13-5. Enforcement of contribution; notice and proceedings.
89-13-7. Enforcement of contribution; action for amount assessed.
89-13-9. Enforcement of contribution; costs.
89-13-11. Contribution where fence already built.
89-13-13. Contribution to keep fence in repair.
89-13-15. Ownership of party fence; fence not to be removed.
89-13-17. Departure from line.
89-13-19. Removal and abandonment of party fence.
89-13-21. Sale of land; lessee or owner to contribute.
89-13-23. Fence removed if not paid for, and adopted by paying proportion of value.

§ 89-13-1. Adjoining owners to contribute.

Persons owning adjoining land or lots, or being lessees thereof for more than two (2) years, shall be bound to contribute equally to the erection of fences on the line dividing the land or lots, if the land or lots on their respective sides be used by the owner or lessee thereof for purposes of cultivation, or for horticultural purposes, or for the purpose of pasturing cattle, horses, hogs or sheep, or if a lot be used as an inclosure for any other purpose; and each party shall be bound to contribute equally toward keeping the party fences in good repair so long as the land or lot be so used. An owner shall not be bound to contribute to the erection of a party fence, either built or to be built, or to keeping the same in repair, who may prefer to build a fence and to leave a lane on his land between himself and the adjoining owner. But the failure to erect such fence for the space of sixty (60) days shall be deemed an abandonment of the intention to do so, and a determination to adopt the fence built, and the person so failing shall then be bound to pay his proportion of the value of the party fence.

HISTORY: Codes, Hutchinson's 1848, ch. 12, art. 6 (4); 1857, ch. 16, art. 2; 1871, § 1908; 1880, § 971; 1892, § 3126; 1906, § 3549; Hemingway's 1917, § 2866; 1930, § 5676; 1942, § 989.

Cross References — Party walls generally, see §§ 89-15-1 et seq.

JUDICIAL DECISIONS

1. In general.

There was no evidence that a fence that was constructed between the parties' properties was in fact a party fence within the meaning of Miss. Code Ann. § 89-13-1. Therefore, the chancery court erred in requiring plaintiffs to reimburse defendants for the cost of the fence that defendants constructed. Varnell v. Rogers, 198 So. 3d 1278, 2016 Miss. App. LEXIS 230 (Miss. Ct. App. 2016).

A yard fence erected along the line of a city lot by one of the adjoining landowner's predecessors in title, without any contribution from the other adjoining landowner or his predecessor in title, was not a party fence. Hunter v. Williams, 230 Miss. 72, 92 So. 2d 367, 1957 Miss. LEXIS 346 (Miss. 1957).

Making of slight repairs on fence by adjoining landowner and giving of notice not to interfere would not constitute such fence a "party fence." Evans v. State, 159 Miss. 870, 132 So. 455, 1931 Miss. LEXIS 69 (Miss. 1931).

That adjoining landowners may have owned land by adverse possession up to fence would not of itself constitute such fence a "party fence." Evans v. State, 159 Miss. 870, 132 So. 455, 1931 Miss. LEXIS 69 (Miss. 1931).

Line fence does not become "party fence" unless provisions of statute are complied with so that each party owns interest in adjoining land and fence. Evans v. State, 159 Miss. 870, 132 So. 455, 1931 Miss. LEXIS 69 (Miss. 1931).

An agreement between adjoining owners for the construction of a dividing line fence at the cost of both is not within the statute of frauds. Berry v. Jones, 106 Miss. 115, 63 So. 341, 1913 Miss. LEXIS 112 (Miss. 1913).

RESEARCH REFERENCES

Am. Jur.

35A Am. Jur. 2d, Fences §§ 6 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Ejectment, Form 42.1 (complaint, petition, or declaration-for recovery of possession-fence built by adjoining landowner on plaintiff's property).

8A Am. Jur. Legal Forms 2d, Fences §§ 114:10 et seq. (agreements affecting the construction and maintenance of fences).

CJS.

36A C.J.S., Fences §§ 2 et seq.

§ 89-13-3. Enforcement of contribution.

If any person, being requested to do so, will not contribute his proper share of the work and furnish the requisite materials suitable for a party fence, or pay the value of his share, the person desiring to build the fence may erect or construct the whole of it, of a proper and suitable kind, being a lawful fence, and may thereafter apply, in writing, to a justice of the peace, who shall appoint three (3) impartial freeholders of the neighborhood to view the fence and determine what amount should be paid by the person who has failed to contribute.

HISTORY: Codes, Hutchinson's 1848, ch. 12, art. 6 (4); 1857, ch. 16, art. 3; 1871, § 1909; 1880, § 972; 1892, § 3127; 1906, § 3550; Hemingway's 1917, § 2867; 1930, § 5677; 1942, § 990.

Editor's Notes — Pursuant to Miss. Const. Art. 6, § 171, all references in the Mississippi Code to "justice of the peace" shall mean justice court judge.

Cross References — Ascertainment of sum to be paid for use of party wall, see § 89-15-5.

RESEARCH REFERENCES

Am. Jur.

35A Am. Jur. 2d, Fences §§ 12, 19, 20.

12 Am. Jur. Pl & Pr Forms (Rev), Fences, Form 2 (demand on adjoining owner to pay share of cost of maintaining partition fence); Form 5 (complaint, petition, or declaration for cost of repairing half of partition or division fence).

CJS.
36A C.J.S., Fences §§ 29-31.

§ 89-13-5. Enforcement of contribution; notice and proceedings.

The opposite party shall have five (5) days' notice of the time of the meeting of the freeholders, which may be served as a summons is required to be, and each party may introduce evidence of the value of the fence; and the freeholders, or a majority of them, may assess the amount to be paid by the one party to the other, and shall give to the party entitled to the compensation a certificate stating the amount they assess in his favor.

HISTORY: Codes, Hutchinson's 1848, ch. 12, art. 6 (4); 1857, ch. 16, art. 3; 1871, § 1909; 1880, § 972; 1892, § 3128; 1906, § 3551; Hemingway's 1917, § 2868; 1930, § 5678; 1942, § 991.

Cross References — Appointment of appraisers to assess value of party wall, see § 89-15-5.

RESEARCH REFERENCES

Am. Jur.
35A Am. Jur. 2d, Fences §§ 21 et seq.
12 Am. Jur. Pl & Pr Forms (Rev), Fences, Form 24 (notice to landowners of meeting of fence viewers); Forms 27, 28 (certificate or report of fence viewers).

CJS.
36A C.J.S., Fences §§ 31 et seq.

§ 89-13-7. Enforcement of contribution; action for amount assessed.

The party may maintain an action for the amount assessed by the freeholders; and the order of the justice appointing the freeholders, and the certificate of the freeholders, and proof of notice to the opposite party of the time of the meeting, shall be prima facie evidence to support the action. The amount recovered shall be a lien upon the land or lot of the defendant.

HISTORY: Codes, 1857, ch. 16, art. 3; 1871, § 1909; 1880, § 972; 1892, § 3129; 1906, § 3552; Hemingway's 1917, § 2869; 1930, § 5679; 1942, § 992.

RESEARCH REFERENCES

Am. Jur.
35A Am. Jur. 2d, Fences § 20.

CJS.
36A C.J.S., Fences §§ 31.

§ 89-13-9. Enforcement of contribution; costs.

The freeholders each shall receive One Dollar and Fifty Cents ($1.50) per day whilst discharging their duty, to be paid by the party at whose instance they were appointed, who may recover the amount as costs, and the justice shall be entitled to fees as in other cases.

HISTORY: Codes, 1857, ch. 16, art. 3; 1871, § 1909; 1880, § 972; 1892, § 3130; 1906, § 3553; Hemingway's 1917, § 2870; 1930, § 5680; 1942, § 993.

RESEARCH REFERENCES

Am. Jur.
35A Am. Jur. 2d, Fences § 30.

§ 89-13-11. Contribution where fence already built.

In case any party fence has been already built, and the adjoining land be used by the owner thereof for any of the purposes set forth in Section 89-17-1, the party who built the same shall in like manner be entitled to compensation, to the extent that ought to be contributed by the owner of the adjoining land, and in case of refusal to pay the same, the amount may be assessed and a recovery had in the same manner as for erecting a new fence.

HISTORY: Codes, 1857, ch. 16, art. 4; 1871, § 1910; 1880, § 973; 1892, § 3131; 1906, § 3554; Hemingway's 1917, § 2871; 1930, § 5681; 1942, § 994.

§ 89-13-13. Contribution to keep fence in repair.

Each proprietor of land or lots separated by a party fence, shall be bound to contribute his due proportion of labor and materials for keeping the fence in good repair, so far as to make it a lawful fence; and contributions for that purpose may be enforced as above provided.

HISTORY: Codes, 1857, ch. 16, art. 5; 1871, § 1911; 1880, § 974; 1892, § 3132; 1906, § 3555; Hemingway's 1917, § 2872; 1930, § 5682; 1942, § 995.

§ 89-13-15. Ownership of party fence; fence not to be removed.

A party fence will be owned jointly by the respective proprietors, either of whom may require the other to contribute to repairing it, but it shall not be taken away, razed, removed, or left down by either party without the consent of the other; and if either party violate this provision, he shall be liable to the action of the other, and be subject to such penalties as a stranger would be. However, a party shall not be bound to contribute towards keeping a party fence in repair, after he shall have ceased to use the land which is divided by it.

HISTORY: Codes, 1857, ch. 16, art. 6; 1871, § 1912; 1880, § 975; 1892, § 3133; 1906, § 3556; Hemingway's 1917, § 2873; 1930, § 5683; 1942, § 996.

Cross References — Prohibition against removal or impairment in value of party wall, see § 89-15-11.

RESEARCH REFERENCES

Am. Jur.
12 Am. Jur. Pl & Pr Forms (Rev), Fences, Forms 42 et seq. (complaint, petition, or declaration for damages for destruction of fence and for other relief); Form 51 (instruction to jury as to measure of damages for destruction of or damage to fence).

CJS.
36A C.J.S., Fences §§ 10, 11 et seq.

§ 89-13-17. Departure from line.

When, from natural obstacles, it shall be impracticable to erect the entire fence on the dividing line, and it be necessary to make a departure on either side, such departure may be made, but the fence shall, notwithstanding, be a party fence.

HISTORY: Codes, 1857, ch. 16, art. 7; 1871, § 1913; 1880, § 976; 1892, § 3134; 1906, § 3557; Hemingway's 1917, § 2874; 1930, § 5684; 1942, § 997.

RESEARCH REFERENCES

CJS.
36A C.J.S., Fences §§ 5-7.

§ 89-13-19. Removal and abandonment of party fence.

In case a joint-owner of a party fence shall desire to have a lane on his land, between his own and the adjoining land, he shall be at liberty to remove his part of the fence, on giving six (6) months' notice to the other joint-owner, and not otherwise; but any proprietor who may remove from his land, and cease to use it for any of the purposes before mentioned, shall thereby abandon his right to the party fence.

HISTORY: Codes, 1857, ch. 16, art. 8; 1871, § 1914; 1880, § 977; 1892, § 3135; 1906, § 3558; Hemingway's 1917, § 2875; 1930, § 5685; 1942, § 998.

RESEARCH REFERENCES

Am. Jur.
35A Am. Jur. 2d, Fences § 17.

CJS.
36A C.J.S., Fences § 27.

§ 89-13-21. Sale of land; lessee or owner to contribute.

In case of the sale of the premises to another person, the purchaser shall have the same right and incur the same liabilities as the original owner, in regard to the party fence. A lessee for a longer time than two (2) years shall stand in the attitude of a purchaser during his term; but if the lease be for two (2) years, or a shorter time, the owner shall be bound to contribute towards the erection and repair of the party fence, if either the owner or the tenant use the land; and in such case, the notice served on the tenant, if the owner be absent, will be sufficient.

HISTORY: Codes, 1857, ch. 16, art. 8; 1871, § 1914; 1880, § 977; 1892, § 3136; 1906, § 3559; Hemingway's 1917, § 2876; 1930, § 5686; 1942, § 999.

RESEARCH REFERENCES

Am. Jur.
35A Am. Jur. 2d, Fences § 12.

CJS.
36A C.J.S., Fences §§ 29, 30.

§ 89-13-23. Fence removed if not paid for, and adopted by paying proportion of value.

The person who built the party fence may remove it at pleasure, if the owner of the adjoining land will not pay his proportion thereof; and although the proprietor of any land may desire to retain any fence built by him on a line which divides his land from that of another person, as a private fence, yet that other person may adopt the same as a party fence by paying his proportion of the value thereof; and if the value cannot be agreed upon by the parties, the person desiring to adopt the fence may apply to a justice of the peace to appoint freeholders to assess the proportion that should be paid, as in other cases.

HISTORY: Codes, 1857, ch. 16, art. 9; 1871, § 1915; 1880, § 978; 1892, § 3137; 1906, § 3560; Hemingway's 1917, § 2877; 1930, § 5687; 1942, § 1000.

Editor's Notes — Pursuant to Miss. Const. Art. 6, § 171, all references in the Mississippi Code to "justice of the peace" shall mean justice court judge.

CHAPTER 15.

PARTY WALLS

Sec.
89-15-1. Parol agreement concerning, binding.
89-15-3. How wall may become a party wall.
89-15-5. Wall not to be used until paid for; how sum ascertained.
89-15-7. Exceptions to appraisers.
89-15-9. Either party may appeal; final record.
89-15-11. Party wall not to be removed or impaired in value.

§ 89-15-1. Parol agreement concerning, binding.

Any agreement for erecting walls which parties may make who own adjoining lots and desire to build party walls, shall be binding, whether in writing or not; and in case of the failure of either party to comply with his contract, the other may have an action for damages.

HISTORY: Codes, 1857, ch. 16, art. 10; 1871, § 1916; 1880, § 979; 1892, § 3138; 1906, § 3561; Hemingway's 1917, § 2883; 1930, § 5688; 1942, § 1001.

Cross References — Contracts required to be in writing, see § 15-3-1.
Party fences, see §§ 89-13-1 et seq.

JUDICIAL DECISIONS

1. In general.

It is not a valid objection to the reconstruction of a party wall, weakened by fire, that one of the parties will be inconvenienced by the construction, or that the wall as it stood was sufficient for such party's own use. Lexington Lodge v. Beal, 94 Miss. 521, 49 So. 833, 1909 Miss. LEXIS 379 (Miss. 1909).

Each purchaser of either lot on which a party wall has been placed, has the right to assume that any compensation as between their vendors has been paid. Mayer v. Martin, 83 Miss. 322, 35 So. 218, 1903 Miss. LEXIS 47 (Miss. 1903).

The verbal agreement of a lot owner to pay one-half of the cost of a wall to be built by an adjoining owner does not run with the land and is not enforceable by the vendee of such adjoining owner. Mayer v. Martin, 83 Miss. 322, 35 So. 218, 1903 Miss. LEXIS 47 (Miss. 1903).

A wall built upon a dividing line of two separate proprietors, partly on the land of each, is a party wall, which means a solid wall, and one of the proprietors has no right to cut windows in such wall above the roof of the other. Weems v. Mayfield, 75 Miss. 286, 22 So. 892, 1897 Miss. LEXIS 124 (Miss. 1897).

A verbal agreement between two proprietors that a division wall, built partly upon the land of each, shall be the sole property of one of them is void under Code 1892, § 2434 [Code 1942, § 832]. Weems v. Mayfield, 75 Miss. 286, 22 So. 892, 1897 Miss. LEXIS 124 (Miss. 1897).

Because of the writing a contemporaneous parol agreement by such grantor to build a wall cannot be shown. Money v. Peavy, 70 Miss. 260, 12 So. 334, 1892 Miss. LEXIS 118 (Miss. 1892).

To recite in a deed as a part of the consideration, that the vendees or any subsequent owner of the land conveyed, "shall have the right of uniting with and using the south wall which may be erected thereon" is not to stipulate that the wall shall or will be built, and the grantors are not liable in damages for failure to erect one. Money v. Peavy, 70 Miss. 260, 12 So. 334, 1892 Miss. LEXIS 118 (Miss. 1892).

This section [Code 1942, § 1001] authorizes verbal contracts between persons who own adjacent lots for erecting partition walls and does not apply to contracts whereby parties are negotiating to become such owners. Money v. Peavy, 70 Miss. 260, 12 So. 334, 1892 Miss. LEXIS 118 (Miss. 1892).

RESEARCH REFERENCES

Am. Jur.

59A Am. Jur. 2d, Party Walls § 6.

14B Am. Jur. Legal Forms 2d, Party Walls, §§ 195:20 et seq. (creation of party wall interests in existing walls).

CJS.

69 C.J.S., Party Walls § 7.

§ 89-15-3. How wall may become a party wall.

If the owner of any lot shall build a substantial and durable brick or stone wall on the line which divides his lot from another, and the owner or lessee of that other lot should desire to erect an adjoining building and connect the same with the building already erected, so as to make the wall of the former building serve as the wall of his own, he may do so by paying to the owner of the first wall half the value thereof, or half the value of so much of the former wall as he may use as a wall to his own house; but he shall not be at liberty to use the former wall in any way which may prove dangerous or detrimental to the owner, except he may close lights therein.

HISTORY: Codes, 1857, ch. 16, art. 11; 1871, § 1917; 1880, § 980; 1892, § 3139; 1906, § 3562; Hemingway's 1917, § 2884; 1930, § 5689; 1942, § 1002.

Cross References — Contributions for upkeep of party fences, see § 89-13-1.

JUDICIAL DECISIONS

1. In general.

One party in restoring and repairing party walls may do so on condition that he gives an adjoining house the same right of support that it had. Lexington Lodge v. Beal, 94 Miss. 521, 49 So. 833, 1909 Miss. LEXIS 379 (Miss. 1909).

A joint owner of burned or injured party walls may be required to contribute his share to cost of repairing same. Howze v. Whitehead, 93 Miss. 578, 46 So. 401, 1908 Miss. LEXIS 78 (Miss. 1908).

RESEARCH REFERENCES

ALR.

Use of party wall for nonstructural purposes. 2 A.L.R.2d 1135.

Right to increase height of party wall. 24 A.L.R.2d 1053.

Am. Jur.

59A Am. Jur. 2d, Party Walls §§ 7-10, 11-15, 40, 64.

19 Am. Jur. Pl & Pr Forms (Rev), Party Walls, Form 1 (complaint, petition, or declaration for contribution to cost of repair of party wall); Form 2 (complaint, petition, or declaration to determine rights in wall and for order enjoining defendant from damaging wall).

14BAm. Jur. Legal Forms 2d, Party Walls §§ 195:20 et seq. (creation of party wall interests in existing walls).

CJS.

69 C.J.S., Party Walls § 19.

§ 89-15-5. Wall not to be used until paid for; how sum ascertained.

A person shall not be at liberty to join or use a wall as a party-wall without first paying to the owner thereof one-half (½) the value of so much as may be used; and if the parties cannot agree as to the value, either may apply to the mayor, police justice of the city, town or village, or to any justice of the peace of the county, in writing, for the appointment of suitable persons to assess the amount to be paid; and such mayor or police justice or justice of the peace shall thereupon appoint three (3) mechanics skilled in the description of work, who, or a majority of whom, shall examine the wall, and assess the amount to be paid to the owner thereof, and give a certificate of such examination and assessment to the party at whose instance they were appointed. The opposite party shall have five (5) days' notice of the time of the meeting of the appraisers, and their names, which notice may be served as a summons is required by law to be served. On payment or tender of the amount assessed, the party desiring to use the wall may proceed to do so.

HISTORY: Codes, 1857, ch. 16, art. 12; 1871, § 1918; 1880, § 981; 1892, § 3140; 1906, § 3563; Hemingway's 1917, § 2885; 1930, § 5690; 1942, § 1003.

Editor's Notes — Pursuant to Miss. Const. Art. 6, § 171, all references in the Mississippi Code to "justice of the peace" shall mean justice court judge.

Cross References — Party fences generally, see §§ 89-13-1 et seq.

Enforcement of contribution for maintenance of party fence, see § 89-13-3.

RESEARCH REFERENCES

Am. Jur.

59A Am. Jur. 2d, Party Walls §§ 31, 36.

CJS.

69 C.J.S., Party Walls § 19.

§ 89-15-7. Exceptions to appraisers.

If either party present to such mayor or police justice or justice of the peace, within ten (10) days after filing of assessment, exceptions to any of the appraisers, and the mayor or police justice or justice of the peace be of the opinion that the exception is well founded, a new appraiser or appraisers may be appointed, and either party shall be at liberty to introduce evidence before the appraisers as to the value of the wall.

HISTORY: Codes, 1857, ch. 16, art. 13; 1871, § 1919; 1880, § 982; 1892, § 3141; 1906, § 3564; Hemingway's 1917, § 2886; 1930, § 5691; 1942, § 1004.

Editor's Notes — Pursuant to Miss. Const. Art. 6, § 171, all references in the Mississippi Code to "justice of the peace" shall mean justice court judge.

§ 89-15-9. Either party may appeal; final record.

The officer so appointing the appraisers shall make and preserve a record of all proceedings as in other cases before him, which shall contain the report of the appraisers, which shall be final, unless appealed from within ten (10) days, as in cases appealed from justice of the peace courts. But either party desiring may appeal, as in other cases before justices of the peace, to the circuit court of the county or district, where the whole matters of difference between the parties shall be heard anew, with or without written pleadings, in a summary way, before a jury and the court, as in other cases appealed from justices of the peace, and the findings of the circuit court in the case shall be final. On the proper certificate from the proper officer of the court finally disposing of the case, either party interested may have the final record recorded in the record of deeds of the county or district thereof.

HISTORY: Codes, 1930, § 5692; 1942, § 1005.

Editor's Notes — Pursuant to Miss. Const. Art. 6, § 171, all references in the Mississippi Code to "justice of the peace" shall mean justice court judge.

RESEARCH REFERENCES

Am. Jur.

59A Am. Jur. 2d, Party Walls §§ 65, 69-74, 77, 80-85.

§ 89-15-11. Party wall not to be removed or impaired in value.

Any party wall which has been paid for, and is used as such, shall not be removed by either party without the consent of the other; nor shall it be so damaged or altered as to render it less valuable to either. And if either party violate this provision he shall be liable to the other as a trespasser for all damages that may be sustained.

HISTORY: Codes, 1857, ch. 16, art. 14; 1871, § 1920; 1880, § 983; 1892, § 3142; 1906, § 3565; Hemingway's 1917, § 2887; 1930, § 5693; 1942, § 1006.

Cross References — Prohibition against removal of party fence, see § 89-13-15.

JUDICIAL DECISIONS

1. In general.

This chapter does not apply to an agreement for passageway and ventilation over a party wall. Binder v. Weinberg, 94 Miss. 817, 48 So. 1013, 1909 Miss. LEXIS 363 (Miss. 1909).

RESEARCH REFERENCES

ALR.

Use of party wall for nonstructural purposes. 2 A.L.R.2d 1135.

Right to increase height of party wall. 24 A.L.R.2d 1053.

Am. Jur.

59A Am. Jur. 2d, Party Walls §§ 24, 25, 27, 39-42, 48, 51.

19 Am. Jur. Pl & Pr Forms (Rev), Party Walls, Form 2 (complaint, petition, or declaration to determine rights in wall and for order enjoining defendant from damaging wall); Form 6 (complaint, petition, or declaration against co-owner for damage to party wall).

CJS.

69 C.J.S., Party Walls §§ 16, 19, 23.

CHAPTER 17.

SALVAGE

Sec.
89-17-1. Abandoned logs, boats, etc., salvaged.
89-17-3. Replevin by owner; bond; lien for salvage.
89-17-5. Prima facie abandonment.
89-17-7. Jurisdiction limited.
89-17-9. How claims for salvage service rendered shall be filed and prosecuted.
89-17-11. Clerk to issue summons.
89-17-13. How notice given where parties are nonresidents of state.
89-17-15. Procedure on return of writ; defendant to plead to petition in case of contest.
89-17-17. Sheriff to advertise property for sale; proceeds held for result of suit.
89-17-19. Failure of defendant to appear at return term; funds condemned to satisfy judgment.
89-17-21. Jurisdiction of justice courts; time for trial; notice to parties.
89-17-23. Person claiming property admitted to defend.
89-17-25. Penalty for converting derelict property to own use.
89-17-27. Unlawful to purchase derelict property from finder thereof.

§ 89-17-1. Abandoned logs, boats, etc., salvaged.

Any saw logs, sawn or hewn timber, lumber, boat, building, or other floatable thing of value that may have become derelict in any of the waters or watercourses of the state or in the beds thereof and which have been relinquished, deserted or left by the owner thereof with the intention of abandoning same shall become the property of the owner of the bed of the stream, or the part thereof, where such property may be found and such owner may raise, float or salve said property or authorize the raising, floating or salving of such property.

HISTORY: Codes, 1930, § 6523; 1942, § 1007; Laws, 1930, ch. 243.

Cross References — Lien for work done or materials supplied for watercraft, see § 85-7-7.

Contribution by owner of adjoining land where party fence already built and adjoining land used by owner for purposes set forth in this section, see § 89-13-11.

This section not applicable to the waters of the Mississippi Sound or Gulf of Mexico, see § 89-17-7.

RESEARCH REFERENCES

Am. Jur.

1 Am. Jur. 2d, Abandoned, Lost, and Unclaimed Property §§ 23, 30-35.

52 Am. Jur. 2d, Logs and Timber §§ 87, 85, 88.

68 Am. Jur. 2d, Salvage §§ 2-4.

CJS.

1 C.J.S., Abandonment § 12.

54 C.J.S., Logs and Logging §§ 56, 57.

77A C.J.S., Salvage §§ 30-35.

§ 89-17-3. Replevin by owner; bond; lien for salvage.

Any person claiming to be the owner of such property may institute an action in replevin for the recovery of such property. Any bond given in such suit to obtain possession of said property shall be liable for any depreciation in value of the property between the date of the giving of the bond and final termination of the suit. If no bond be given by either party within seventy-two (72) hours after the seizure of the property under the writ, the sheriff on the written demand of either party shall sell the same for cash at public outcry after posting a notice of the time and place of sale at three (3) or more public places in the county. The proceeds of sale shall be paid into the registry of the court to await the final outcome of the suit. The defendant in such suit, in the event he or any person acting for him or with his consent has raised, floated or salvaged the property whose title or possession is in issue, shall be entitled to a lien on such property for the reasonable expense of raising, floating, or salvaging such property.

HISTORY: Codes, 1930, § 6524; 1942, § 1008; Laws, 1930, ch. 243.

Cross References — This section not applicable to the waters of the Mississippi Sound or Gulf of Mexico, see § 89-17-7.

§ 89-17-5. Prima facie abandonment.

In any suit brought by one claiming to be the owner of such property, proof that such property has been relinquished, deserted or left for a period of three (3) years thereafter without effort to salve such property shall be prima facie evidence of the intention to abandon.

HISTORY: Codes, 1930, § 6525; 1942, § 1009; Laws, 1930, ch. 243.

Cross References — This section not applicable to the waters of the Mississippi Sound or Gulf of Mexico, see § 89-17-7.

§ 89-17-7. Jurisdiction limited.

The following sections, and not the foregoing, shall apply to the waters of the Mississippi Sound or of the Gulf of Mexico within the jurisdiction and control of the State of Mississippi; provided that if the foregoing sections should be held unconstitutional, then the following sections shall apply to the entire state.

HISTORY: Codes, 1930, § 6526; 1942, § 1010; Laws, 1930, ch. 243.

§ 89-17-9. How claims for salvage service rendered shall be filed and prosecuted.

Whenever any person shall desire to claim compensation for any salvage service rendered by him in reclaiming and protecting from loss, damage, injury or destruction, any saw log, sawn or hewn timber, lumber, boat or other water craft, or other floatable thing of value, that may have become derelict, in any of the waters of this state or in the beds or on the shores thereof, or for compensation for the preservation thereof, such finder, salvor, or person raising or floating such property, shall file a petition for compensation in the circuit court of the county in which such property shall be found, raised or floated, or salved. In the petition he shall set forth a full and particular description of the property found, raised or floated, or salved, containing all names, letters or other marks of identification appearing thereon, and in the petition he shall also set forth the facts constituting his claim for compensation, and the amount claimed by him for such service, and shall also state the name of the owner of the property, if known to the petitioner, and his place of residence and post-office address. Said owner shall be made a party defendant thereto, and if the owner be unknown, all persons having or claiming any interest in the property shall be made parties defendant, and the petition shall be sworn to. Immediately upon the filing of such petition, the petitioner shall deliver to the sheriff of the county the property described in the petition to be dealt with as hereinafter provided in Section 89-17-17.

HISTORY: Codes, Hemingway's 1917, § 7305; 1930, § 6527; 1942, § 1011; Laws, 1908, ch. 120.

Cross References — General jurisdiction of circuit court, see § 9-7-81.
Lien for work done to or materials supplied for watercraft, see § 85-7-7.

JUDICIAL DECISIONS

1. In general.

Salvor has right to possession of vessel to enforce salvage claim only where such vessel is a derelict, and a vessel is not a derelict if the owner has not abandoned it but is in pursuit of it. Mengel Box Co. v. Joest, 127 Miss. 461, 90 So. 161, 1921 Miss. LEXIS 245 (Miss. 1921).

RESEARCH REFERENCES

ALR.

Time limits for salvage suits under 46 USCS § 730. 56 A.L.R. Fed. 542.

§ 89-17-11. Clerk to issue summons.

Upon filing such petition the clerk shall issue a summons to the defendant named as required by the Mississippi Rules of Civil Procedure. In case the owners of the property are unknown, then a notice shall be published as provided for by the Mississippi Rules of Civil Procedure.

HISTORY: Codes, Hemingway's 1917, § 7306; 1930, § 6528; 1942, § 1012; Laws, 1908, ch. 120; Laws, 1991, ch. 573, § 124, eff from and after July 1, 1991.

Cross References — Summons, see Miss. R. Civ. P. 4.

§ 89-17-13. How notice given where parties are nonresidents of state.

In suits against persons named in the petition, as defendants thereto, where such defendant is a nonresident of the state, or cannot be served with process, then notice shall be given to such defendant as is provided for in the Mississippi Rules of Civil Procedure.

HISTORY: Codes, Hemingway's 1917, § 7307; 1930, § 6529; 1942, § 1013; Laws, 1908, ch. 120; Laws, 1991, ch. 573, § 125, eff from and after July 1, 1991.

Cross References — Service of process, see Miss. R. Civ. P. 4.

§ 89-17-15. Procedure on return of writ; defendant to plead to petition in case of contest.

At the return of the process, in case the defendant shall contest the petitioner's right to compensation or salvage, or the amount thereof, the petition shall stand for a complaint and the defendant shall plead to it as if it were an ordinary action at law and the matter shall be tried as provided for in the Mississippi Rules of Civil Procedure.

HISTORY: Codes, Hemingway's 1917, § 7308; 1930, § 6530; 1942, § 1014; Laws, 1908, ch. 120; Laws, 1991, ch. 573, § 126, eff from and after July 1, 1991.

§ 89-17-17. Sheriff to advertise property for sale; proceeds held for result of suit.

Immediately upon the delivery to the sheriff of the property described in the petition as provided in Section 89-17-9, the sheriff shall at once advertise the property for sale in the same manner as provided by law for the advertisement and sale of personal property under execution, and on the day fixed shall sell the property for cash to the highest bidder, and shall hold the proceeds to abide the result of the suit or proceeding. But the defendant to the petition, or any person interposing a claim thereto, in cases against unknown owners, can at any time before the day of sale, execute a bond with two (2) or more sureties in double the value of the property, such valuation to be fixed by the sheriff conditioned to satisfy such judgment as the petitioner shall recover in the case, and upon the execution of such bond, to be approved by the sheriff, the property shall be delivered to the defendant or claimant.

HISTORY: Codes, Hemingway's 1917, § 7309; 1930, § 6531; 1942, § 1015; Laws, 1908, ch. 120.

§ 89-17-19. Failure of defendant to appear at return term; funds condemned to satisfy judgment.

In case the defendant shall not appear at the return term of the writ, or in cases against unknown owners, where no person or party interposes a claim, the court shall award the petitioner a judgment for the amount as appears to the court that petitioner is entitled to, and condemn the funds in the hands of the sheriff, or render judgment against the defendant or his bond as the case may be, for the satisfaction of the judgment so rendered and costs. In case there shall be a surplus remaining in the hands of the sheriff after satisfying the judgment and costs, it shall be paid to the clerk of the court, to be held by him subject to the claim of the owners of the property so sold, and shall be paid out to such owner, upon the order of the court, after satisfactory evidence is adduced, establishing in the judgment of the court such ownership. In all cases where the petitioner establishes his claim, and is awarded a judgment for the amount stated in the petition, the court shall allow the petitioner a reasonable attorney's fee for preparing the petition, which shall be taxed as part of the costs of the case.

HISTORY: Codes, Hemingway's 1917, § 7310; 1930, § 6532; 1942, § 1016; Laws, 1908, ch. 120.

RESEARCH REFERENCES

ALR.

Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

§ 89-17-21. Jurisdiction of justice courts; time for trial; notice to parties.

Justice courts shall have jurisdiction of all cases provided for in this chapter, where the value of the property described in the petition does not exceed the amount provided in Section 9-11-9, and in all cases where the defendant is a nonresident, or is not served with process, the provisions of the section of the code in relation to attachments before justice court judges shall apply, and notice shall be given to the defendant, and the case tried as provided in that section of the code. When the case shall be one against unknown owners, the justice court judge shall fix the trial for a date not earlier than one (1) month from the beginning of the suit, and notices shall be posted for three (3) consecutive weeks in the county of the justice court judge, addressed to all persons having or claiming any interest in the property described in the petition, and describing the property in such notices, requiring them to appear before the justice court judge on the date fixed for trial to contest the claim of the petitioner, which notices shall be posted in the public places in the county likely to be seen, which shall be in lieu of a publication thereof in a newspaper.

HISTORY: Codes, Hemingway's 1917, § 7311; 1930, § 6533; 1942, § 1017; Laws, 1908, ch. 120; Laws, 1981, ch. 471, § 52; Laws, 1982, ch. 423, § 28, made eff from and after January 1, 1984, or, with respect to a given county, from and after such earlier date as the county appoints a justice court clerk pursuant to § 9-11-27(3).

Editor's Notes — Section 60, ch. 471, Laws, 1981, as amended by § 28 of ch. 423, Laws, 1982, provides as follows:

"SECTION 60. Section 8 of this act shall take effect and be in force from and after the date it is finally effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended. Sections 4, 48 and 59 of this act shall take effect and be in force from and after passage. Sections 17 and 22 of this act shall take effect and be in force from and after March 31, 1982. Sections 15, 16 and 58 of this act shall take effect and be in force from and after July 1, 1983. Sections 20, 23, 24, 25, 26, 27, 29, 30, 31, 34, 35, 36, 37, 38, 39, 41, 42, 46, 47, 49, 50, 51, 52, 54, 55, 56 and 57 of this act shall take effect from and after January 1, 1984, or with respect to a given county, from and after such earlier date as such county elects to employ a clerk for the justice court of such county in accordance with the provisions of subsection (3) of Section 7 of this act. Sections 9, 10, 18, 19 and 43 of this act shall take effect and be in force from and after January 1, 1984."

Cross References — Civil jurisdiction of justice courts, see § 9-11-9.

Notice, proceedings and trial in actions relating to attachments, see §§ 11-33-105, 11-33-107.

RESEARCH REFERENCES

Am. Jur.

47 Am. Jur. 2d, Justices of the Peace §§ 24 et seq.

CJS.

51 C.J.S., Justices of the Peace §§ 26, 42 et seq.

§ 89-17-23. Person claiming property admitted to defend.

On the return of the summons before a justice of the peace, or on the day fixed for trial, in cases against nonresidents or parties not served with process, or in cases against unknown owners, the justice shall hear the cause. Any person making claim to the property described in the petition shall be admitted to defend as provided in Section 89-17-15 for cases in the circuit court, and the same mode of procedure shall be followed in the trial as is provided for the trial of civil actions before justices of the peace, under the general laws of the state, and judgment shall be rendered as hereinbefore provided in cases before the circuit court.

HISTORY: Codes, Hemingway's 1917, § 7312; 1930, § 6534; 1942, § 1018; Laws, 1908, ch. 120.

Editor's Notes — Pursuant to Miss. Const., Art. 6, § 171, all references in the Mississippi Code to justice of the peace shall mean justice court judge.

§ 89-17-25. Penalty for converting derelict property to own use.

If any person shall convert to his own use, sell or otherwise dispose of any saw log, sawn or hewn timber, lumber, boat, or other water craft, or other floatable thing of value not belonging to him, which may have come into his possession while floating as derelict, in any of the waters of the State of Mississippi, or which may theretofore have been sunken and raised or floated from such sunken condition by him or others, or which he or others may have found cast upon the shores of the Gulf of Mexico, or Mississippi Sound, in the State of Mississippi, or any bay, inlet, or bayou, emptying into same, or upon the shore of any other watercourse in the State of Mississippi, he shall be guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than double the value of the property converted, sold or disposed of, or by imprisonment in the county jail for a term not exceeding six (6) months.

HISTORY: Codes, Hemingway's 1917, § 7313; 1930, § 6535; 1942, § 1019; Laws, 1908, ch. 120.

Cross References — Petty larceny, see § 97-17-53.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

RESEARCH REFERENCES

Am. Jur.

52 Am. Jur. 2d, Logs and Timber § 93.

§ 89-17-27. Unlawful to purchase derelict property from finder thereof.

If any person shall purchase, or otherwise acquire, except at a sale as provided in this chapter, or by order of a court of competent jurisdiction, from any person other than the owner thereof, any property of the character or description, and in the condition enumerated in the foregoing section, such person shall be guilty of a misdemeanor, and on conviction shall be punished by a fine not exceeding double the value of the property so purchased, or acquired, or by imprisonment in the county jail for a term not exceeding six (6) months.

HISTORY: Codes, Hemingway's 1917, § 7314; 1930, § 6536; 1942, § 1020; Laws, 1908, ch. 120.

Cross References — Crime of receiving stolen goods, see § 97-17-70.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

CHAPTER 19.

MISSISSIPPI CONSERVATION EASEMENTS

Sec.

89-19-1. Short title.
89-19-3. Definitions.
89-19-5. General provisions relating to conservation easement; acceptance; recordation; duration.
89-19-7. Actions affecting easements.
89-19-9. Validity of easements not affected by certain conditions.
89-19-11. Capital improvements on property upon which easements have been granted.
89-19-13. Interests to which chapter applies; relation to other laws.
89-19-15. Recorded easements to be filed with Attorney General and Department of Wildlife, Fisheries, and Parks.

§ 89-19-1. Short title.

This chapter shall be known as the "Mississippi Conservation Easement Act of 1986."

HISTORY: Laws, 1986, ch. 404, § 1, eff from and after passage (approved March 27, 1986).

Comparable Laws from other States — Alabama: Code of Ala. §§ 35-18-1 through 35-18-6.
Georgia: O.C.G.A. §§ 44-10-1 through 44-10-8.
North Carolina: N.C. Gen. Stat. § 113A-230 et seq.
Tennessee: Tenn. Code Ann. § 66-9-301 et seq.
Texas: Tex. Nat. Res. Code § 183.001 et seq.
Virginia Code Annotated, § 10.1-1009 et seq.

§ 89-19-3. Definitions.

For purposes of this chapter, the following words shall have the meaning ascribed herein unless the context otherwise requires:

(1) "Conservation easement" shall mean a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic, historical or open-space values of real property, assuring its availability for agricultural, forest, recreational, educational or open-space use, protecting natural features and resources, maintaining or enhancing air and water quality or preserving the natural, historical, architectural, archaeological or cultural aspects of real property.

(2) "Holder" shall mean either:

(a) A governmental body empowered by the law of this state or the United States to hold an interest in real property; or

(b) A private, nonprofit, charitable or educational corporation, association or trust, the purposes or powers of which include retaining or protecting the natural, scenic, historical or open-space values of real property, assuring the availability of real property for agricultural, forest, recreational, educational or open-space use, protecting natural features and resources, maintaining or enhancing air or water quality or preserving the natural, historical, architectural, archaeological or cultural aspects of real property which is the recipient or grantee of a conservation easement.

(3) "Third-party right of enforcement" shall mean a right granted in a conservation easement to a governmental body or private, nonprofit charitable corporation, association or trust, which is not a holder but which is eligible to be a holder, to enforce any of the terms of the conservation easement.

(4) "Person" shall mean any natural person or legal entity.

HISTORY: Laws, 1986, ch. 404, § 2, eff from and after passage (approved March 27, 1986).

RESEARCH REFERENCES

Am. Jur.
25 Am. Jur. 2d, Easements and licenses
§ 1.

§ 89-19-5. General provisions relating to conservation easement; acceptance; recordation; duration.

(1) Except as otherwise provided by this chapter, a conservation easement may be created, conveyed, recorded and assigned, in the same method and manner as other easements.

(2) No right or duty in favor of or against a holder and no right of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

(3) Except as provided in subsection (2) of Section 89-19-7 of this chapter, a conservation easement is unlimited in its duration unless the instrument creating it otherwise provides.

(4) An interest in real property in existence at the time a conservation easement is created is not impaired by the conservation easement unless the owner of the interest is a party to the conservation easement or consents to it.

(5) A conservation easement shall continue to be effective and shall not be extinguished if the easement holder is or becomes the owner in fee of the subject property.

HISTORY: Laws, 1986, ch. 404, § 3; Laws, 1988, ch. 379, § 2, eff from and after passage (approved April 18, 1988).

Cross References — Requirement that conservation easements be filed with the Attorney General and the Department of Wildlife, Fisheries and Parks, see § 89-19-15.

RESEARCH REFERENCES

ALR.

Conveyance of "right of way," in connection with conveyance of another tract, as passing fee or easement. 89 A.L.R.3d 767.

"Compliance with state standards" as requirement to granting right-of-way over federal public lands under § 505(a)(iv) of the Federal Land Policy and Management Act of 1976 (43 USCS § 1765(a)(iv)). 60 A.L.R. Fed. 386.

Am. Jur.

25 Am. Jur. 2d, Easements and licenses §§ 11-122.

22 Am. Jur. Trials, Condemnation of Easements §§ 1 et seq.

3 Am. Jur. Proof of Facts 2d, Abandonment of easement §§ 1-16.

5 Am. Jur. Proof of Facts 2d, Intent to create negative easement §§ 1-14.

28 Am. Jur. Proof of Facts 2d, Permissive possession or use of land §§ 1-16.

33 Am. Jur. Proof of Facts 2d, Extent of easement over servient estate §§ 1-31.

CJS.

28A C.J.S., Easements §§ 4-89.

§ 89-19-7. Actions affecting easements.

(1) Any action to enforce a conservation easement may be brought by:

(a) An owner of an interest in the real property burdened by the easement;

(b) A holder of the easement;

(c) A person having a third-party right of enforcement;

(d) The Attorney General of the State of Mississippi;

(e) The Mississippi Department of Wildlife, Fisheries and Parks; or

(f) A person otherwise authorized and empowered by law.

(2) This chapter does not, and shall not be construed to, affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity. In such proceeding, the holder of the conservation easement shall be compensated for the value of the easement.

HISTORY: Laws, 1986, ch. 404, § 4; Laws, 1988, ch. 379, § 3; Laws, 2000, ch. 516, § 132, eff from and after passage (approved Apr. 30, 2000).

Cross References — Transfer of functions of Department of Wildlife Conservation to Department of Wildlife, Fisheries and Parks, see § 49-1-4.

Provision that, except as provided in subsection (2) of this section, a conservation easement is of unlimited duration unless the instrument creating it otherwise provides, see § 89-19-5.

RESEARCH REFERENCES

ALR.

Conveyance of "right of way," in connection with conveyance of another tract, as passing fee or easement. 89 A.L.R.3d 767.

"Compliance with state standards" as requirement to granting right-of-way over federal public lands under § 505(a)(iv) of the Federal Land Policy and Management Act of 1976 (43 USCS § 1765(a)(iv)). 60 A.L.R. Fed. 386.

Am. Jur.

25 Am. Jur. 2d, Easements and licenses §§ 99-105.

22 Am. Jur. Trials, Condemnation of Easements §§ 1 et seq.

3 Am. Jur. Proof of Facts 2d, Abandonment of easement §§ 1-16.

5 Am. Jur. Proof of Facts 2d, Intent to create negative easement §§ 17-14.

28 Am. Jur. Proof of Facts 2d, Permis-

sive possession or use of land §§ 1-16.

33 Am. Jur. Proof of Facts 2d, Extent of easement over servient estate §§ 1-31.

CJS.

28A C.J.S., Easements §§ 77, 78, 90-92, 117-137.

§ 89-19-9. Validity of easements not affected by certain conditions.

A conservation easement shall be valid despite the following:

(a) It is not appurtenant to an interest in real property;

(b) It may be or has been assigned to another holder;

(c) It is not of a character that has been traditionally recognized at common law;

(d) It imposes a negative burden;

(e) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

(f) The benefit does not touch or concern real property; or

(g) There is no privity of estate or contract.

HISTORY: Laws, 1986, ch. 404, § 5, eff from and after passage (approved March 27, 1986).

RESEARCH REFERENCES

ALR.

Conveyance of "right of way," in connection with conveyance of another tract, as passing fee or easement. 89 A.L.R.3d 767.

"Compliance with state standards" as requirement to granting right-of-way over federal public lands under § 505(a)(iv) of the Federal Land Policy and Management Act of 1976 (43 USCS § 1765(a)(iv)). 60 A.L.R. Fed. 386.

Am. Jur.

25 Am. Jur. 2d, Easements and licenses §§ 11 et seq.

22 Am. Jur. Trials, Condemnation of Easements §§ 1 et seq.

3 Am. Jur. Proof of Facts 2d, Abandonment of easement §§ 1-16.

5 Am. Jur. Proof of Facts 2d, Intent to create negative easement §§ 1-14.

28 Am. Jur. Proof of Facts 2d, Permissive possession or use of land §§ 1-16.

33 Am. Jur. Proof of Facts 2d, Extent of easement over servient estate §§ 1-31.

CJS.

28A C.J.S., Easements §§ 4, 11 et seq.

§ 89-19-11. Capital improvements on property upon which easements have been granted.

With the exception of "Mississippi Landmarks," as defined by the Antiquities Law of Mississippi (Section 39-7-1 et seq., Mississippi Code of 1972) and of properties entered in the National Register of Historic Places, no public money, derived either from a special fund or the General Fund, shall be expended for capital improvements on any real property upon which a conservation easement has been granted unless the conservation easement is perpetual, a governmental body is the holder of the easement and the capital improvements are solely for the use and benefit of such holder.

HISTORY: Laws, 1986, ch. 404, § 6, eff from and after passage (approved March 27, 1986).

§ 89-19-13. Interests to which chapter applies; relation to other laws.

(1) This chapter shall apply to an interest created after March 27, 1986, whether the interest is designated as a conservation easement or as a covenant, equitable servitude, restriction, easement or otherwise, as long as such interest complies with the provisions of this chapter.

(2) This chapter shall apply to any interest created prior to March 27, 1986, if the interest would have been enforceable had it been created after March 27, 1986, unless retroactive application would contravene the Constitution or laws of this state or the United States.

(3) This chapter shall not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement or otherwise, that is enforceable under any other law of this state.

(4) The provisions of this chapter are cumulative and supplemental to any other provision of law.

HISTORY: Laws, 1986, ch. 404, § 7, eff from and after passage (approved March 27, 1986).

§ 89-19-15. Recorded easements to be filed with Attorney General and Department of Wildlife, Fisheries, and Parks.

Whenever any instrument conveying a conservation easement is recorded after April 18, 1988, the clerk of the court recording it shall mail certified copies thereof, together with notice as to the date and place of recordation, to the Attorney General of the State of Mississippi and the Mississippi Department of Wildlife, Fisheries and Parks. The requirement that certified copies be mailed to the Attorney General and the Mississippi Department of Wildlife, Fisheries and Parks shall be stated in any instrument which conveys a conservation easement after April 18, 1988. The holder of any conservation easement created prior to the date hereof wishing to qualify such easement for the benefits provided under this chapter shall provide to the Attorney General and the Mississippi Department of Wildlife, Fisheries and Parks, within one (1) year after April 18, 1988, a certified copy of the instrument creating such easement, indicating the date and place of the recordation.

HISTORY: Laws, 1988, ch. 379, § 1; Laws, 2000, ch. 516, § 133, eff from and after passage (approved Apr. 30, 2000).

CHAPTER 21.

UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT [REPEALED]

Sec.
89-21-1 through 89-21-17. Repealed.

§§ 89-21-1 through 89-21-17. Repealed.

Repealed by Laws, 2020, ch. 406, § 88, eff from and after July 1, 2020.
§ 89-21-1. [Laws, 1994, ch. 618, § 9, eff from and after July 1, 1994.]
§ 89-21-3. [Laws, 1994, ch. 618, § 1, eff from and after July 1, 1994.]
§ 89-21-5. [Laws, 1994, ch. 618, § 2, eff from and after July 1, 1994.]
§ 89-21-7. [Laws, 1994, ch. 618, § 3, eff from and after July 1, 1994.]
§ 89-21-9. [Laws, 1994, ch. 618, § 4, eff from and after July 1, 1994.]
§ 89-21-11. [Laws, 1994, ch. 618, § 5, eff from and after July 1, 1994.]
§ 89-21-13. [Laws, 1994, ch. 618, § 6, eff from and after July 1, 1994.]
§ 89-21-15. [Laws, 1994, ch. 618, § 7, eff from and after July 1, 1994.]
§ 89-21-17. [Laws, 1994, ch. 618, § 8, eff from and after July 1, 1994.]

Editor's Notes — Former § 89-21-1 provided the short title.

Former § 89-21-3 provided for the right to disclaim interest in property.

Former § 89-21-5 provided for the rules governing time of disclaimer.

Former § 89-21-7 specified the form of disclaimer.

Former § 89-21-9 provided for the effect of disclaimer.

Former § 89-21-11 provided for waiver and bar of a property interest.

Former § 89-21-13 provided that the remedy provided by the chapter was not exclusive.

Former § 89-21-15 provided an applicability clause.

Former § 89-21-17 provided for uniformity of application and construction.

For present similar provisions, see Chapter 22 of this title, §§ 89-22-1 through 89-22-37.

CHAPTER 22.

MISSISSIPPI UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT (2002/2010)

Sec.
89-22-1. Short title.
89-22-3. Definitions.
89-22-5. Scope.
89-22-7. Chapter supplemented by other law.
89-22-9. Power to disclaim; general requirements; when irrevocable.
89-22-11. Disclaimer of interest in property.
89-22-13. Disclaimer of rights of survivorship in jointly held property.
89-22-15. Disclaimer of property held as tenants by the entirety.
89-22-17. Disclaimer of interest by trustee.
89-22-19. Disclaimer of power of appointment or other power not held in fiduciary capacity.
89-22-21. Disclaimer by appointee, object, or taker in default of exercise of power of appointment.
89-22-23. Disclaimer of power held in fiduciary capacity.
89-22-25. Delivery or filing.
89-22-27. When disclaimer barred or limited.
89-22-29. Tax-qualified disclaimer.
89-22-31. Recording of disclaimer.
89-22-33. Application to existing relationships.
89-22-35. Uniformity of application and construction.
89-22-37. Severability clause.

§ 89-22-1. Short title.

This chapter may be cited as the “Mississippi Uniform Disclaimer of Property Interests Act (2002/2010).”

HISTORY: Laws, 2020, ch. 406, § 67, eff from and after July 1, 2020.

§ 89-22-3. Definitions.

In this chapter:

(1) “Disclaimant” means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

(2) “Disclaimed interest” means the interest that would have passed to the disclaimant had the disclaimer not been made.

(3) “Disclaimer” means the refusal to accept an interest in or power over property.

(4) “Fiduciary” means a personal representative, trustee, agent acting under a power of attorney, or other person authorized to act as a fiduciary with respect to the property of another person.

(5) “Jointly held property” means property held in the name of two (2) or more persons under an arrangement in which all holders have concurrent interests and under which the last-surviving holder is entitled to the whole

of the property. Jointly held property does not include property held as tenants by the entirety.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band or an Alaskan native village that is recognized by federal law or formally acknowledged by a state.

(8) "Trust" means:

(A) An express trust, charitable or noncharitable, with additions thereto, whenever and however created; and

(B) A trust created under a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.

HISTORY: Laws, 2020, ch. 406, § 68, eff from and after July 1, 2020.

§ 89-22-5. Scope.

This chapter applies to disclaimers of any interest in or power over property, whenever created.

HISTORY: Laws, 2020, ch. 406, § 69, eff from and after July 1, 2020.

§ 89-22-7. Chapter supplemented by other law.

(a) Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter.

(b) This chapter does not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a law other than this chapter.

HISTORY: Laws, 2020, ch. 406, § 70, eff from and after July 1, 2020.

§ 89-22-9. Power to disclaim; general requirements; when irrevocable.

(a) A person may disclaim, in whole or part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

(b) Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of this state or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim, or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

(c) To the extent there is no material conflict of interest, a parent, as defined in Section 93-15-103(h), can disclaim on behalf of the parent's minor or incapacitated child, if a conservator or guardian has not been appointed for the child.

(d) To be effective, a disclaimer must be in a writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in Section 89-22-25. In this subsection "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(e) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

(f) A disclaimer becomes irrevocable when it is delivered or filed under Section 89-22-25 or when it becomes effective as provided in Sections 89-22-11 through 89-22-23 of this chapter, whichever occurs later.

(g) A disclaimer made under this chapter is not a transfer, assignment, or release.

(h) A person obligated to distribute an interest disclaimed under this chapter is not liable to any person for distributing the interest as if the interest were not disclaimed unless the person obligated to distribute the interest receives a copy of the disclaimer before distributing the interest.

HISTORY: Laws, 2020, ch. 406, § 71, eff from and after July 1, 2020.

§ 89-22-11. Disclaimer of interest in property.

(a) In this section:

(1) "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

(2) "Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

(b) Except for a disclaimer governed by Section 89-22-13, 89-22-15 or 89-22-17, the following rules apply to a disclaimer of an interest in property:

(1) The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

(2) The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

(3) If the instrument does not contain a provision described in paragraph (2), the following rules apply:

(A) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(B) If the disclaimant is an individual, except as otherwise provided in subparagraphs (C) and (D), the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(C) If by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.

(D) If the disclaimed interest would pass to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest instead passes by representation to the descendants of the disclaimant who survive the time of distribution. If no descendant of the disclaimant survives the time of distribution, the disclaimed interest passes to those persons, including the state but excluding the disclaimant, and in such shares as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile had the transferor died at the time of distribution. However, if the transferor's surviving spouse is living but is remarried at the time of distribution, the transferor is deemed to have died unmarried at the time of distribution.

(4) Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

HISTORY: Laws, 2020, ch. 406, § 72, eff from and after July 1, 2020.

§ 89-22-13. Disclaimer of rights of survivorship in jointly held property.

(a) Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or in part, the incremental portion of the jointly held property devolving to the surviving holder by right of survivorship.

(b) A disclaimer under subsection (a) of this section takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

(c) If a disclaimer is made under subsection (a) of this section with only one (1) holder surviving the death of the holder to whose death the disclaimer relates, the incremental portion disclaimed shall, as a consequence of the disclaimer, pass as part of the estate of the deceased holder.

(d) If a disclaimer is made under subsection (a) of this section with two (2) or more of the holders surviving the death of the holder to whose death the disclaimer relates:

(1) The disclaimer does not sever the joint tenancy with respect to the jointly held property as among the surviving holders;

(2) The incremental portion disclaimed, as a consequence of a disclaimer, devolves to the surviving holders in proportion to their respective interests in the jointly held property excluding the disclaimant and any other surviving holder who disclaims to the extent of his, her or its disclaimer of the incremental portion;

(3) An incremental portion devolving to a surviving holder, as a consequence of one or more disclaimers, may be disclaimed by the surviving holder;

(4) To the extent that all of the surviving holders disclaim an incremental portion devolving to them, the portion shall instead pass as part of the estate of the deceased holder; and

(5)) The proportion of each of the surviving holders with respect to the jointly held property shall be adjusted to take into account the devolution of the incremental portion to the extent that the portion is disclaimed.

HISTORY: Laws, 2020, ch. 406, § 73, eff from and after July 1, 2020.

§ 89-22-15. Disclaimer of property held as tenants by the entirety.

(a) The survivorship interest in property held as a tenancy by the entirety to which the survivor succeeds by operation of law upon the death of the cotenant may be disclaimed as provided in this chapter. For purposes of this chapter only, the deceased tenant's interest in property held as a tenancy by the entirety shall be deemed to be an undivided one-half (1/2) interest.

(b) A disclaimer under subsection (a) takes effect as of the death of the deceased tenant to whose death the disclaimer relates.

(c) The survivorship interest in property held as a tenancy by the entirety disclaimed by the surviving tenant passes as if the disclaimant had predeceased the tenant to whose death the disclaimer relates.

HISTORY: Laws, 2020, ch. 406, § 74, eff from and after July 1, 2020.

§ 89-22-17. Disclaimer of interest by trustee.

(a) If a trustee disclaims an interest in property that otherwise would have become trust property:

(1) The interest does not become trust property;

(2) The disclaimer:

(A) Takes effect as of the time the trust became irrevocable; and

(B) Relates back for all purposes to the time the trust became irrevocable; and

(3) The disclaimed interest is not subject to the claims of any creditor of the trustee, the trust, or any trust beneficiary.

(b) If the instrument creating the disclaimed interest contains a provision that provides for the disposition of the interest if the interest were to be disclaimed, the disclaimed interest passes according to that provision.

(c) If the instrument creating the disclaimed interest does not contain a provision described by subsection (b), the disclaimed interest passes as if:

(1) All of the current beneficiaries, presumptive remainder beneficiaries, and contingent beneficiaries of the trust affected by the disclaimer who are individuals who died before the trust became irrevocable; and

(2) All beneficiaries of the trust affected by the disclaimer who are not individuals ceased to exist without successor organizations and without substitution of beneficiaries under the cy pres doctrine before the trust became irrevocable.

(d) Subsection (c) applies only for purposes of determining the disposition of an interest in property disclaimed by a trustee that otherwise would have become trust property and applies only with respect to the trust affected by the disclaimer. Subsection (c) does not apply with respect to other trusts governed by the instrument and does not apply for other purposes under the instrument or under the laws of intestacy.

HISTORY: Laws, 2020, ch. 406, § 75, eff from and after July 1, 2020.

§ 89-22-19. Disclaimer of power of appointment or other power not held in fiduciary capacity.

If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

(1) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

(3) The instrument creating the power is construed as if the power expired when the disclaimer became effective.

HISTORY: Laws, 2020, ch. 406, § 76, eff from and after July 1, 2020.

§ 89-22-21. Disclaimer by appointee, object, or taker in default of exercise of power of appointment.

(a) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(b) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

HISTORY: Laws, 2020, ch. 406, § 77, eff from and after July 1, 2020.

§ 89-22-23. Disclaimer of power held in fiduciary capacity.

(a) If a fiduciary disclaims a power held in a fiduciary capacity which has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(b) If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(c) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

HISTORY: Laws, 2020, ch. 406, § 78, eff from and after July 1, 2020.

§ 89-22-25. Delivery or filing.

(a) In this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

(1) An annuity or insurance policy;

(2) An account with a designation for payment on death;

(3) A security registered in beneficiary form;

(4) A pension, profit-sharing, retirement, or other employment-related benefit plan; or

(5) Any other nonprobate transfer at death.

(b) Subject to subsections (c) through (*l*), delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method likely to result in its receipt.

(c) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) A disclaimer must be delivered to the personal representative of the decedent's estate; or

(2) If no personal representative is then serving, it must be filed with a court having jurisdiction to appoint the personal representative.

(d) In the case of an interest in a testamentary trust:

(1) A disclaimer must be delivered to the trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate; or

(2) If no personal representative is then serving, it must be filed with a court having jurisdiction to enforce the trust.

(e) In the case of an interest in an inter vivos trust:

(1) A disclaimer must be delivered to the trustee then serving;

(2) If no trustee is then serving, it must be filed with a court having jurisdiction to enforce the trust; or

(3) If the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.

(f) In the case of an interest created by a beneficiary designation which is disclaimed before the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation or to such person's legal representative.

(g) In the case of an interest created by a beneficiary designation which is disclaimed after the designation becomes irrevocable, the disclaimer must be delivered to the person obligated to distribute the interest.

(h) In the case of a disclaimer by a surviving holder of jointly held property or property held as tenants by the entirety, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

(i) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created:

(1) The disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(2) If no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(j) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(1) The disclaimer must be delivered to the holder, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power; or

(2) If no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(k) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (c), (d) or (e), as if the power disclaimed were an interest in property.

(*l*) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

HISTORY: Laws, 2020, ch. 406, § 79, eff from and after July 1, 2020.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section by renumbering the section number from 89-22-35 to 89-22-25. The Joint Committee ratified the correction at its October 19, 2020, meeting.

§ 89-22-27. When disclaimer barred or limited.

(a) A disclaimer is barred by a written waiver of the right to disclaim.

(b) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(1) The disclaimant accepts the interest sought to be disclaimed;

(2) The disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so; or

(3) A judicial sale of the interest sought to be disclaimed occurs.

(c) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

(d) A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

(e) A disclaimer is barred or limited if so provided by law other than this chapter.

(f) A disclaimer of a power over property which is barred by this section is ineffective. A disclaimer of an interest in property which is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this chapter had the disclaimer not been barred.

HISTORY: Laws, 2020, ch. 406, § 80, eff from and after July 1, 2020.

§ 89-22-29. Tax-qualified disclaimer.

(a) Notwithstanding any other provision of this chapter, if as a result of a disclaimer or transfer, the disclaimed or transferred interest is treated under the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under this chapter.

(b) In order for a disclaimer made under the provisions of this chapter to be effective as a tax-qualified disclaimer under the provisions of Title 26 of the United States Code, the disclaimer must satisfy the conditions of Title 26, Section 2518 of the United States Code, as now or hereafter amended, including the requirement that the disclaimer be made generally within nine (9) months from the day the interest being disclaimed was created.

HISTORY: Laws, 2020, ch. 406, § 81, eff from and after July 1, 2020.

§ 89-22-31. Recording of disclaimer.

(a) A disclaimer of an interest in or relating to real property does not provide constructive notice to all persons unless the disclaimer contains a legal description of the real property to which the disclaimer relates and unless the disclaimer is filed for recording in the office of the chancery clerk of the county or counties where the real property is located.

(b) An effective disclaimer meeting the requirements of subsection (a) constitutes constructive notice to all persons from and after the time of filing.

(c) Failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

HISTORY: Laws, 2020, ch. 406, § 82, eff from and after July 1, 2020.

§ 89-22-33. Application to existing relationships.

Except as otherwise provided in Section 89-22-27, an interest in or power over property existing on July 1, 2020, as to which the time for delivering or filing a disclaimer under law superseded by this chapter has not expired may be disclaimed after July 1, 2020.

HISTORY: Laws, 2020, ch. 406, § 83, eff from and after July 1, 2020.

§ 89-22-35. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

HISTORY: Laws, 2020, ch. 406, § 84, eff from and after July 1, 2020.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section by renumbering the section number from 89-22-29 to 89-22-35. The Joint Committee ratified the correction at its October 19, 2020, meeting.

§ 89-22-37. Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: Laws, 2020, ch. 406, § 85, eff from and after July 1, 2020.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section by renumbering the section number from 89-22-31 to 89-22-37. The Joint Committee ratified the correction at its October 19, 2020, meeting.

CHAPTER 23.

MISSISSIPPI UNIFORM ENVIRONMENTAL COVENANTS ACT

Sec.

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§ 89-23-1. Short title.

This chapter may be cited as the Mississippi Uniform Environmental Covenants Act.

HISTORY: Laws, 2008, ch. 398, § 1, eff from and after July 1, 2008.

Comparable Laws from other States — Alabama: Code of Ala. § 35-19-1 et seq.
Hawaii: HRS § 508C-1 et seq.
Idaho: Idaho Code § 55-3001 et seq.
Illinois: 765 ILCS 122/1 et seq.
Iowa: Iowa Code § 455I.1 et seq.
Maine: 38 M.R.S. § 3001 et seq.
Maryland: Md. ENVIRONMENT Code Ann. § 1-801 et seq.
Minnesota: Minn. Stat. § 114E.01 et seq.
Nebraska: R.R.S. Neb. § 76-2601 et seq.
Oklahoma: 60 Okl. St. § 49.11 et seq.
South Dakota: S.D. Codified Laws § 34A-17-1 et seq.
Utah: Utah Code Ann. § 57-25-101 et seq.
Virginia: Va. Code Ann. § 10.1-1238 et seq.
Washington: Rev. Code Wash. (ARCW) § 64.70.005 et seq.
West Virginia: W. Va. Code § 22-22B-1 et seq.

§ 89-23-3. Definitions.

In this chapter:

(1) "Activity and use limitations" means restrictions or obligations created under this chapter with respect to real property.

(2) "Agency" means the Mississippi Department of Environmental Quality or any other state or federal agency that determines or approves the environmental response project pursuant to which the environmental covenant is created.

(2A) "Commission" means the Mississippi Commission on Environmental Quality.

(3) "Common interest community" means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, or for maintenance, or improvement of other real property described in a recorded covenant that creates the common interest community.

(4) "Environmental covenant" means a servitude arising under an environmental response project that imposes activity and use limitations.

(5) "Environmental response project" means a plan or work performed for environmental remediation of real property and conducted:

(A) Under a federal or state program governing environmental remediation of real property, including:

(i) Subchapter III or IX of the federal Resource Conservation and Recovery Act of 1976, 42 USC Sections 6921 through 6939e and 6991 through 6991i;

(ii) Section 7002 or 7003 of the federal Resource Conservation and Recovery Act of 1976, 42 USC Sections 6972 and 6973;

(iii) The federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC Sections 9601 through 9647, as amended;

(iv) The Mississippi Air and Water Pollution Control Law, Section 49-17-1 et seq.;

(v) The Mississippi Solid Wastes Disposal Law of 1974, Section 17-17-1 et seq.;

(vi) The Mississippi Underground Storage Tank Act of 1988, Section 49-17-401 et seq.;

(vii) Such other laws or regulations as the commission shall enumerate.

(B) Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency; or

(C) Under a state voluntary clean-up program authorized in the Mississippi Brownfields Voluntary Cleanup and Redevelopment Act, Section 49-35-1 et seq.

(6) "Holder" means the grantee of an environmental covenant as specified in Section 89-23-5(a).

(7) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(8) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(10) "Servitude" means a covenant, profit, easement in gross, or easement appurtenant.

HISTORY: Laws, 2008, ch. 398, § 2, eff from and after July 1, 2008.

Cross References — Mississippi Department of Environmental Quality generally, see §§ 49-2-1 et seq.

Commission on Environmental Quality, generally, see § 49-2-5.

§ 89-23-5. Holder defined; rights and obligations; subordination of rights.

(a) Any person, including a person that owns an interest in the real property, a municipality or other unit of local government, may be a holder. An environmental covenant may identify more than one (1) holder. The interest of a holder is an interest in real property.

(b) A right of an agency under this chapter or under an environmental covenant is not an interest in real property. Nothing in this chapter authorizes the commission to act as a holder.

(c) An agency is bound by any obligation it assumes in an environmental covenant, but an agency does not assume obligations merely by signing or approving an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations the person assumes in the covenant, but signing the covenant does not change obligations, rights, or protections granted or imposed under law other than this chapter except as provided in the covenant.

(d) The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

(1) An interest that has priority under other law is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the covenant.

(2) This chapter does not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the covenant.

(3) A subordination agreement may be contained in an environmental covenant covering real property or in a separate record. If the environmental covenant covers commonly owned property in a common interest community, the record may be signed by any person authorized by the governing board of the owners' association.

(4) An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant.

HISTORY: Laws, 2008, ch. 398, § 3, eff from and after July 1, 2008.

§ 89-23-7. Contents of environmental covenant.

(a) An environmental covenant must:

(1) State that the instrument is an environmental covenant executed pursuant to this chapter;

(2) Contain a legally sufficient description of the real property subject to the covenant;

(3) Describe the activity and use limitations on the real property;

(4) Identify every holder;

(5) Be signed by the agency, every holder, and unless waived by the agency, every owner of the fee simple of the real property subject to the covenant;

(6) Be signed by the commission, unless the commission waives participation; and

(7) Identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(b) In addition to the information required by subsection (a), an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including any:

(1) Requirements for notice following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination on, the property subject to the covenant;

(2) Requirements for periodic reporting describing compliance with the covenant;

(3) Rights of access to the property granted in connection with implementation or enforcement of the covenant;

(4) A brief narrative description of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;

(5) Limitation on amendment or termination of the covenant in addition to those contained in Sections 89-23-17 and 89-23-19; and

(6) Rights of the holder in addition to its right to enforce the covenant pursuant to Section 89-23-21.

(c) In addition to other conditions for its approval of an environmental covenant, the agency or the commission may require those persons specified by the agency or commission who have interests in the real property to sign the covenant.

(d) If the commission refuses to sign an environmental covenant, it shall set forth its reasons for refusing to sign in an order and such order may be appealed as provided in Section 49-17-41.

HISTORY: Laws, 2008, ch. 398, § 4, eff from and after July 1, 2008.

§ 89-23-9. Validity of environmental covenant; effect on other instruments.

(a) An environmental covenant that complies with this chapter runs with the land.

(b) An environmental covenant that is otherwise effective is valid and enforceable even if:

(1) It is not appurtenant to an interest in real property;

(2) It can be or has been assigned to a person other than the original holder;

(3) It is not of a character that has been recognized traditionally at common law;

(4) It imposes a negative burden;

(5) It imposes an affirmative obligation on a person having an interest in the real property or on the holder;

(6) The benefit or burden does not touch or concern real property;

(7) There is no privity of estate or contract;

(8) The holder dies, ceases to exist, resigns, or is replaced; or

(9) The owner of an interest subject to the environmental covenant and the holder are the same person.

(c) An instrument that creates restrictions or obligations with respect to real property that would qualify as activity and use limitations except for the fact that the instrument was recorded before July 1, 2008, is not invalid or unenforceable because of any of the limitations on enforcement of interests described in subsection (b) or because it was identified as an easement, servitude, deed restriction, or other interest. This chapter does not apply in any other respect to such an instrument.

(d) This chapter does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under the law of this state.

HISTORY: Laws, 2008, ch. 398, § 5, eff from and after July 1, 2008.

§ 89-23-11. Relation of this chapter to other land-use laws.

This chapter does not authorize a use of real property that is otherwise prohibited by zoning, by law other than this chapter regulating use of real property, or by a recorded instrument that has priority over the environmental covenant.

An environmental covenant may prohibit or restrict uses of real property which are authorized by zoning or by law other than this chapter.

HISTORY: Laws, 2008, ch. 398, § 6, eff from and after July 1, 2008.

§ 89-23-13. Notice requirement; penalty for failure to provide notice.

(a) A copy of an environmental covenant shall be provided by the persons and in the manner required by the agency to:

(1) Each person that signed the covenant;

(2) Each person holding a recorded interest in the real property subject to the covenant;

(3) Each person in possession of the real property subject to the covenant;

(4) Each municipality or other unit of local government in which real property subject to the covenant is located; and

(5) Any other person the agency requires.

(b) The validity of a covenant is not affected by failure to provide a copy of the covenant as required under this section.

(c) Failure by any person to provide a copy of the covenant in the manner required by the agency shall be punishable by a civil penalty to be determined by the Commission on Environmental Quality consistent with the terms and provisions of Section 49-17-43.

HISTORY: Laws, 2008, ch. 398, § 7, eff from and after July 1, 2008.

§ 89-23-15. Recording of environmental covenant, amendment, and termination.

(a) An environmental covenant and any amendment or termination of the covenant must be recorded in every county in which any portion of the real property subject to the covenant is located. For purposes of indexing, a holder shall be treated as a grantee.

(b) Except as otherwise provided in Section 89-23-17(b), an environmental covenant is subject to the laws of this state governing recording and priority of interests in real property including, but not limited to, the requirement of providing indexing instructions and preparer data, as set forth in Section 89-5-33(3); and, the requirement to provide an acknowledgment as set forth in Section 89-3-1.

HISTORY: Laws, 2008, ch. 398, § 8, eff from and after July 1, 2008.

§ 89-23-17. Duration of environmental covenants.

(a) An environmental covenant is perpetual unless it is:

(1) By its terms limited to a specific duration or terminated by the occurrence of a specific event;

(2) Terminated by consent pursuant to Section 89-23-19;

(3) Terminated by foreclosure of an interest that has priority over the environmental covenant;

(4) Terminated or modified in an eminent domain proceeding, but only if:

(A) The commission and the agency that signed the covenant are parties to the proceeding;

(B) All persons identified in Section 89-23-19(a) and (b) are given notice of the pendency of the proceeding; and

(C) The court determines, after hearing, that the termination or modification will not adversely affect human health or the environment; or

(5) Terminated or modified by the commission pursuant to the following:

(A) If the agency that signed an environmental covenant has determined that the intended benefits of the covenant can no longer be realized, the commission, by an order in which all persons identified in Section 89-23-19(a) and (b) have been given notice, may terminate the covenant or reduce its burden on the real property subject to the covenant.

(B) The commission's order shall be subject to review as provided in Section 49-17-41. Failure by the commission to make a determination within one hundred twenty (120) days of a request to terminate the covenant or reduce its burden on the real property subject to the covenant shall be deemed a decision that the environmental covenant should not be terminated or modified and parties listed in Section 89-23-21 may request a hearing before the commission in accordance with Section 49-17-41.

(b) Except as otherwise provided in subsection (a), an environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.

HISTORY: Laws, 2008, ch. 398, § 9, eff from and after July 1, 2008.

Cross References — Right of eminent domain, generally, see §§ 11-27-1 et seq.
Commission on Environmental Quality generally, see § 49-2-5.

§ 89-23-19. Amendment or termination of environmental covenant; consent.

(a) An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

(1) The agency;

(2) Unless waived by the agency, the current owner of the fee simple of the real property subject to the covenant;

(3) The commission, unless it waives its participation;

(4) Each person that originally signed the covenant, unless the person waived in a signed record the right to consent or a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and

(5) Except as otherwise provided in subsection (d)(2), the holder.

(b) If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the covenant unless the current owner of the interest consents to the amendment or has waived in a signed record the right to consent to amendments.

(c) Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

(d) Except as otherwise provided in an environmental covenant:

(1) A holder may not assign its interest without consent of the other parties;

(2) A holder may be removed and replaced by agreement of the other parties specified in subsection (a); and

(e) A court of competent jurisdiction may fill a vacancy in the position of holder.

HISTORY: Laws, 2008, ch. 398, § 10, eff from and after July 1, 2008.

Cross References — Commission on Environmental Quality generally, see § 49-2-5.
Recording of environmental covenant, amendments to covenant and termination of covenant required, see § 89-23-15.

§ 89-23-21. Violation of environmental covenant; injunctive relief.

(a) A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

(1) A party to the covenant;

(2) The agency;

(3) The commission;

(4) Any person to whom the covenant expressly grants power to enforce;

(5) A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; or

(6) A municipality or other unit of local government in which the real property subject to the covenant is located.

(b) This chapter does not limit the regulatory authority of the agency or the Mississippi Commission on Environmental Quality under law other than this chapter with respect to an environmental response project.

(c) A person is not responsible for or subject to liability for environmental remediation solely because it has the right to enforce an environmental covenant.

HISTORY: Laws, 2008, ch. 398, § 11, eff from and after July 1, 2008.

Cross References — Commission on Environmental Quality, generally, see § 49-2-5.

§ 89-23-23. Application and construction of chapter.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

HISTORY: Laws, 2008, ch. 398, § 12, eff from and after July 1, 2008.

§ 89-23-25. Relation of chapter to federal law.

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act (15 USCS Section 7001 et seq.) but does not modify, limit, or supersede Section 101 of that act (15 USCS Section 7001(a)) or authorize electronic delivery of any of the notices described in Section 103 of that act (15 USCS Section 7003(b)).

HISTORY: Laws, 2008, ch. 398, § 13, eff from and after July 1, 2008.

§ 89-23-27. Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: Laws, 2008, ch. 398, § 14, eff from and after July 1, 2008.

CHAPTER 25.

MISSISSIPPI UNIFORM STATUTORY RULE AGAINST PERPETUITIES

Sec.
89-25-1. Short title.
89-25-3. Statutory rule against perpetuities.
89-25-5. When nonvested property interest or power of appointment is created.
89-25-7. Reformation.
89-25-9. Exclusions from the statutory rule against perpetuities.
89-25-11. Prospective application.
89-25-13. Uniformity.
89-25-15. Supersession.

§ 89-25-1. Short title.

This chapter shall be known and may be referred to as the "Mississippi Uniform Statutory Rule Against Perpetuities."

HISTORY: Laws, 2015, ch. 414, § 1, eff from and after July 1, 2015.

§ 89-25-3. Statutory rule against perpetuities.

(1) A nonvested property interest is invalid unless:

(a) When the interest is created, it is certain to vest or terminate no later than twenty-one (21) years after the death of an individual then alive; or

(b) The interest either vests or terminates within ninety (90) years after its creation.

(2) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(a) When the power is created, the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than twenty-one (21) years after the death of an individual then alive; or

(b) The condition precedent either is satisfied or becomes impossible to satisfy within ninety (90) years after its creation.

(3) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(a) When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than twenty-one (21) years after the death of an individual then alive; or

(b) The power is irrevocably exercised or otherwise terminates within ninety (90) years after its creation.

(4) In determining whether a nonvested property interest or a power of appointment is valid under subsection (1)(a), (2)(a), or (3)(a) of this section, the possibility that a child will be born to an individual after the individual's death is disregarded.

(5) If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument seeks to disallow the vesting or termination of any interest or trust beyond, seeks to postpone the vesting or termination of any interest or trust until, or seeks to operate in effect in any similar fashion upon, the later of:

(a) The expiration of a period of time not exceeding twenty-one (21) years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement; or

(b) The expiration of a period of time that exceeds or might exceed twenty-one (21) years after the death of the survivor of lives in being at the creation of the trust or other property arrangement;

that language is inoperative to the extent that it produces a period of time that exceeds twenty-one (21) years after the death of the survivor of the specified lives.

HISTORY: Laws, 2015, ch. 414, § 2, eff from and after July 1, 2015.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (4) by inserting the word "is" between the words "death" and "disregarded" near the end of the subsection. The Joint Committee ratified the correction at its August 17, 2015, meeting.

§ 89-25-5. When nonvested property interest or power of appointment is created.

(1) Except as provided in subsections (2), (3) and (4) of this section and in Section 89-25-11(1), the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(2) For purposes of this chapter, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of:

(a) A nonvested property interest; or

(b) A property interest subject to a power of appointment described in Section 89-25-3(2) or (3), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(3) For purposes of this chapter, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

(4) For purposes of this chapter, if a nongeneral or testamentary power of appointment is exercised to create another nongeneral or testamentary power of appointment, every nonvested property interest or power of appointment created through the exercise of the other nongeneral or testamentary power of appointment is considered to have been created at the time of the creation of the first nongeneral or testamentary power of appointment.

HISTORY: Laws, 2015, ch. 414, § 3, eff from and after July 1, 2015.

§ 89-25-7. Reformation.

Upon petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the ninety (90) years allowed by Section 89-25-3(1)(b), (2)(b) or (3)(b) or the three hundred sixty (360) years allowed in Section 89-25-9(h), if:

(a) A nonvested property interest or a power of appointment becomes invalid under Section 89-25-3;

(b) A class gift is not invalid, but might become invalid under Section 89-25-3, and the time has arrived when the share of any class member is to take effect in possession or enjoyment;

(c) A nonvested property interest that is not validated by Section 89-25-3(1)(a) can vest but not within ninety (90) years after its creation; or

(d) In the case of a trust which otherwise meets the requirements of Section 89-25-9(h), all beneficial interests in the trust can vest or the trust can terminate but not within three hundred sixty (360) years.

HISTORY: Laws, 2015, ch. 414, § 4, eff from and after July 1, 2015.

§ 89-25-9. Exclusions from the statutory rule against perpetuities.

Section 89-25-3 shall not apply to:

(a) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:

(i) A premarital or postmarital agreement;

(ii) A separation or divorce settlement;

(iii) A spouse's election;

(iv) A similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;

(v) A contract to make or not to revoke a will or trust;

(vi) A contract to exercise or not to exercise a power of appointment;

(vii) A transfer in satisfaction of a duty of support; or

(viii) A reciprocal transfer;

(b) A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

(c) A power to appoint a fiduciary;

(d) A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(e) A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

(f) A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse;

(g) A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this state; or

(h) A trust:

(i) That is governed by the laws of this state;

(ii) That grants to the trustee the power to sell trust property; and

(iii) Which, pursuant to the terms of the trust instrument, does not exceed:

1. Three hundred sixty (360) years as to personal property; and
2. One hundred ten (110) years as to real property.

HISTORY: Laws, 2015, ch. 414, § 5, eff from and after July 1, 2015.

§ 89-25-11. Prospective application.

(1) Except as provided by subsection (2) of this section, this chapter applies to a nonvested property interest or a power of appointment that is created on or after July 1, 2015. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(2) If a nonvested property interest or a power of appointment was created before July 1, 2015 and is determined in a judicial proceeding, commenced on or after July 1, 2015, to violate this state's rule against perpetuities as that rule existed before July 1, 2015, a court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

HISTORY: Laws, 2015, ch. 414, § 6, eff from and after July 1, 2015.

§ 89-25-13. Uniformity.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

HISTORY: Laws, 2015, ch. 414, § 7, eff from and after July 1, 2015.

§ 89-25-15. Supersession.

This chapter supersedes the rule of the common law known as the rule against perpetuities.

HISTORY: Laws, 2015, ch. 414, § 8, eff from and after July 1, 2015.

TITLE 91.

TRUSTS AND ESTATES

Chapter 1. Descent and Distribution. 91-1-1
Chapter 3. Uniform Simultaneous Death Law. 91-3-1
Chapter 5. Wills and Testaments. 91-5-1
Chapter 7. Executors and Administrators. 91-7-1
Chapter 8. Mississippi Uniform Trust Code. 91-8-101
Chapter 9. Trusts and Trustees. 91-9-1
Chapter 11. Fiduciary Security Transfers. 91-11-1
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Chapter 19. Gifts to Minors [Repealed]. 91-19-1
Chapter 20. Transfers to Minors. 91-20-1
Chapter 21. Uniform Transfer-on-Death Security Registration Act. 91-21-1
Chapter 23. Revised Uniform Fiduciary Access to Digital Assets Act. 91-23-1
Chapter 25. Mississippi Uniform Estate Tax Apportionment Act. 91-25-1
Chapter 27. Mississippi Real Property Transfer-On-Death Act. 91-27-1
Chapter 29. Effect of Dissolution of Marriage. 91-29-1
Chapter 31. Uniform Partition of Heir Property. 91-31-1

CHAPTER 1.

DESCENT AND DISTRIBUTION

Sec.

91-1-1. Territorial application.
91-1-3. Descent of land.
91-1-5. Half-bloods.
91-1-7. Descent of property as between husband and wife.
91-1-9. Descent of trust estates.
91-1-11. Personal estate to descend as real estate.
91-1-13. Estate of testator not disposed of by will to descend.
91-1-15. Descent among illegitimates; definitions.
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91-1-21. Exempt property liable for debt of decedent.
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91-1-25. Person who has killed another not to inherit from him.
91-1-27. How title to property acquired by descent may be made.
91-1-29. Heirs to be cited to appear.
91-1-31. Judgment as to descent of property cannot be assailed collaterally except for fraud.

§ 91-1-1. Territorial application.

This chapter applies to the property of decedents domiciled in this state and real property of nonresidents located in this state.

HISTORY: Codes, 1857, ch. 60, art. 110; 1871, § 1950; 1880, § 1270; 1892, § 1542; 1906, § 1648; Hemingway's 1917, § 1380; 1930, § 1401; 1942, § 467; Laws, 2020, ch. 343, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment rewrote the section, which read: "All personal property situated in this state shall descend and be distributed according to the laws of this state regulating the descent and distribution of such property, regardless of all marital rights which may have accrued in other states, and notwithstanding the domicile of the deceased may have been in another state, and whether the heirs or persons entitled to distribution be in this state or not. The widow of such deceased person shall take her share in the personal estate according to the laws of this state."

Cross References — Computation of relationship according to civil law, see §§ 1-3-71, 1-3-73.

Refund of federal and state taxes to survivor of deceased, see § 27-73-9.

Petition to establish title of property acquired by descent, see §§ 91-1-27 et seq.

Proceedings pertaining to trusts and estates, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Application.
3. —Particular personalty.

1. In general.

Courts cannot ingraft exceptions on the statute. Williams v. Lee, 130 Miss. 481, 94 So. 454, 1922 Miss. LEXIS 225 (Miss. 1922).

Wife not estopped by silence with knowledge of pretended second marriage to assert right of inheritance. Williams v. Lee, 130 Miss. 481, 94 So. 454, 1922 Miss. LEXIS 225 (Miss. 1922).

Payment of debt having situs in Mississippi to foreign administrator is no defense against heirs. Richardson v. Neblett, 122 Miss. 723, 84 So. 695, 1920 Miss. LEXIS 472 (Miss. 1920).

The effect of the statute is to abolish ancillary administrations in this state altogether. Carroll v. McPike, 53 Miss. 569, 1876 Miss. LEXIS 118 (Miss. 1876); Partee v. Kortrecht, 54 Miss. 66, 1876 Miss. LEXIS 12 (Miss. 1876).

The statute makes the local law the rule of distribution. Wilson v. Cox, 49 Miss. 538, 1873 Miss. LEXIS 142 (Miss. 1873).

2. Application.

Although the Uniform Commercial Code may govern whether a certificate of deposit passes to the estate or under a presumed joint tenancy, it does not determine who takes a certificate of deposit once it is in the estate. Matter of Zimmerman v. Corely, 519 So. 2d 430 (Miss. 1988).

But where the owner of the debt so deals with it as to establish an intention to locate it here, or if the debt arose as an incident to a business conducted in this state, the statute applies. Jahier v. Rascoe, 62 Miss. 699, 1885 Miss. LEXIS 127 (Miss. 1885).

The statute does not per se localize here all debts which are due by residents of this state to persons domiciled out of it. Speed v. Kelly, 59 Miss. 47, 1881 Miss. LEXIS 73 (Miss. 1881).

The statute applies in cases of partial intestacy. Wilson v. Cox, 49 Miss. 538, 1873 Miss. LEXIS 142 (Miss. 1873).

The statute applies only to the estates of intestates. The renunciation of a will by a widow will not make the statute applicable. Slaughter v. Garland, 40 Miss. 172, 1866 Miss. LEXIS 60 (Miss. 1866).

3. —Particular personalty.

Stock in Mississippi corporation, owned by person domiciled in Minnesota at the time of death, has its situs in Mississippi, and distribution is controlled by law of the state. Ewing v. Warren, 144 Miss. 233, 109 So. 601, 1926 Miss. LEXIS 342 (Miss. 1926).

Money, deposited in a bank within the state, belonging to person domiciled in another state at time of death, will be distributed under Mississippi law. Ewing v. Warren, 144 Miss. 233, 109 So. 601, 1926 Miss. LEXIS 342 (Miss. 1926).

Rent on land in Mississippi is a debt governed by its laws. Richardson v. Neblett, 122 Miss. 723, 84 So. 695, 1920 Miss. LEXIS 472 (Miss. 1920).

Descent of the leasehold interest in school lands situated within the state, owned by testatrix domiciled outside of the state, is to be governed by the laws of the state, and of legacy of such interest lapses on the death of the legatee without children, though under the statute of the domicile of testatrix it would not lapse. Neblett v. Neblett, 112 Miss. 550, 73 So. 575, 1916 Miss. LEXIS 145 (Miss. 1916).

Stock of Mississippi bank owned by nonresident had situs in Mississippi and was liable to claims of creditors of estate, and was not exempt to widow. Jane v. Martinez, 104 Miss. 208, 61 So. 177, 1913 Miss. LEXIS 20 (Miss. 1913).

The personal estate of a young unmarried man who leaves his parental home in another state and in search of health, or a suitable field of labor, acquires a domicile in this state but abandons it and returns to his original domicile, is not distributable according to the laws of this state. Mayo v. Equitable Life Assurance Soc., 71 Miss. 590, 15 So. 791, 1893 Miss. LEXIS 123 (Miss. 1893).

RESEARCH REFERENCES

ALR.

Conflict of laws regarding election for or against will, and effect in one jurisdiction of election in another. 69 A.L.R.3d 1081.

Am. Jur.

23 Am. Jur. 2d, Descent and Distribution §§ 12, 13.

CJS.

26B C.J.S., Descent and Distribution §§ 7, 8.

Law Reviews.

1987 Mississippi Supreme Court Review, Wills and estates. 57 Miss. L. J. 542, August, 1987.

1987 Mississippi Supreme Court Review, Trusts. 57 Miss. L. J. 555, August, 1987.

Weems and Evans, Mississippi law of intestate succession, wills, and administration and the proposed Mississippi Uniform Probate Code: a comparative analysis. 62 Miss. L. J. 1, Spring, 1992.

Practice References.

Bickel and Flannery, Living Trusts: Forms and Practice (Matthew Bender).

Burke, Friel, and Gagliardi, Modern Estate Planning, Second Edition (Matthew Bender).

Christensen, International Estate Planning, Second Edition (Matthew Bender).

Mobley, Robinson and Hedrick, Pritchard on the Law of Wills and Administration of Estates, Seventh Edition (Michie).

Planning for Large Estates (Matthew Bender).

Schoenblum, Estate Planning Forms and Clauses (Matthew Bender).

Wyatt, Trust Administration and Taxation (Matthew Bender).

Estate Planning Package - LexisNexis Folio (LexisNexis).

Murphy's Will Clauses: Annotations and Forms with Tax Effects (Matthew Bender).

§ 91-1-3. Descent of land.

When any person shall die seized of any estate of inheritance in lands, tenements, and hereditaments not devised, the same shall descend to his or her children, and their descendants, in equal parts, the descendants of the deceased child or grandchild to take the share of the deceased parent in equal parts among them. When there shall not be a child or children of the intestate nor descendants of such children, then to the brothers and sisters and father and mother of the intestate and the descendants of such brothers and sisters in equal parts, the descendants of a sister or brother of the intestate to have in equal parts among them their deceased parent's share. If there shall not be a child or children of the intestate, or descendants of such children, or brothers or sisters, or descendants of them, or father or mother, then such estate shall descend, in equal parts, to the grandparents and uncles and aunts, if any there be; otherwise, such estate shall descend in equal parts to the next of kin of the intestate in equal degree, computing by the rules of the civil law. There shall not be any representation among collaterals, except among the descendants of the brothers and sisters of the intestate.

HISTORY: Codes, Hutchinson's 1848, ch. 44, art. 2 (50); 1857, ch. 60, art. 110; 1871, § 1948; 1880, § 1271; 1892, § 1543; 1906, § 1649; Hemingway's 1917, § 1381; 1930, § 1402; 1942, § 468; Laws, 1952, ch. 252, § 1.

Cross References — Computation of relationship according to civil law, see §§ 1-3-71, 1-3-73.

Fraudulently producing child with intent to intercept inheritance, see § 97-19-45.

Proceedings pertaining to trusts and estates, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

ANALYSIS

1. Construction and application in general.
2. Application in particular circumstances.
3. —Relatives of half blood.
4. —Exempt property.

1. Construction and application in general.

Under Miss. Code Ann. § 91-1-3, since decedent had no spouse or children, his heirs at law were his brother, sisters, mother and the descendants of his deceased brother and sister in equal parts; the decedent's illegitimate children, having failed to file suit to determine legitimacy within the limitation period, had made moot any consideration of whether or not they were legitimate heirs. In re Estate of Thomas, 881 So. 2d 257, 2003 Miss. App. LEXIS 996 (Miss. Ct. App. 2003), rev'd, 883 So. 2d 1173, 2004 Miss. LEXIS 1269 (Miss. 2004).

Collateral heirs, under statute of descent and distribution for real property, may take only if there is no surviving spouse or child. Daniel v. Snowdoun Asso., 513 So. 2d 946, 1987 Miss. LEXIS 2840 (Miss. 1987).

The nephews and nieces of an intestate decedent, who were children of his whole-blood brothers, succeeded to his entire estate to the exclusion of his half-blood sister, under §§ 91-1-5 and 91-1-3, since his whole-blood brothers would have been his sole and only surviving legal heirs to the exclusion of his half-blood sister, and their children occupied the same position as their parents, by right of representation. Jones v. Stubbs, 434 So. 2d 1362, 1983 Miss. LEXIS 2741 (Miss. 1983).

A claim of inheritance based upon an alleged oral contract of adoption made many years prior to the death of the intestate, will not be recognized. Brassiell v. Brassiell, 228 Miss. 243, 87 So. 2d 699, 1956 Miss. LEXIS 509 (Miss. 1956).

Husband is heir of wife, but not of wife's parents, and he inherits no interest in lands of wife's parents where wife predeceased parents, children of wife inheriting share of their mother. Dunaway v. McEachern, 37 So. 2d 767 (Miss. 1948).

The statutes on descent and distribution are not suspended by, and have no application to, the refusal of a court to set aside a divorce decree in an action brought by the surviving party to the divorce action. Stanley v. Stanley, 201 Miss. 545, 29 So. 2d 641, 1947 Miss. LEXIS 418 (Miss. 1947).

The right of an heir to the estate of a deceased person does not originate in the lifetime of the decedent. Covington v. Frank, 77 Miss. 606, 27 So. 1000, 1900 Miss. LEXIS 45 (Miss. 1900).

In a suit by the creditor of a deceased person to foreclose a mortgage, persons whose heirship is denied are competent witnesses to prove relationship. Covington v. Frank, 77 Miss. 606, 27 So. 1000, 1900 Miss. LEXIS 45 (Miss. 1900).

An equitable right to a cause of action on a debt accruing to two or more persons by descent from the creditor is a joint right. Stauffer v. British & American Mortg. Co., 77 Miss. 127, 25 So. 299, 1899 Miss. LEXIS 46 (Miss. 1899).

Preference is not given by the statute to relations of one side over those of the other. Doe ex dem. Hickey v. Gilbert, 2 Miss. 32, 1834 Miss. LEXIS 8 (Miss. 1834).

2. Application in particular circumstances.

Brother clearly had standing to challenge the transfer of the family farm from their mother to a revocable trust on the basis of undue influence because he was one of his mother's heirs at law; if the conveyance of the property from his mother to the trust was set aside, the brother presumptively stood to inherit a child's share of the property. Hodnett v. Hodnett, 269 So. 3d 317, 2018 Miss. App. LEXIS 189 (Miss. Ct. App.), cert. denied, 258 So. 3d 287, 2018 Miss. LEXIS 527 (Miss. 2018).

Although grandfather of two deceased children qualified as a "statutory heir" under Miss. Code Ann. § 91-1-3, he did not qualify as a listed relative under Miss. Code Ann. § 11-7-13, and would not have standing as such to bring a wrongful-death action. Burley v. Douglas, 26 So. 3d 1013, 2009 Miss. LEXIS 538 (Miss. 2009).

Chancery court did not err in ruling that appellee was entitled to two shares of a decedent's estate; while Miss. Code Ann. § 91-1-3 preserved appellee's right to inherit his mother's portion of the decedent's estate as his mother's sole descendant, Miss. Code Ann. § 93-17-13 provided that appellee would be treated as the decedent's adopted brother for inheritance purposes. Jenkins v. Jenkins, 990 So. 2d 807, 2008 Miss. App. LEXIS 557 (Miss. Ct. App. 2008).

Question of whether party asserting interest in property, which had been inherited through Mississippi laws of descent and distribution, should be prohibited in equity from doing so was not appropriate matter for decision on motion for summary judgment, where heir at law did not intend to relinquish any inherited rights by signing final estate decree and signed for sole purpose of settling will contest between children and widow, where evidence existed that persons taking under estate decree also knew of and recognized interest of heir at law in property, and he took action to assert his interest in that property. Sumrall v. Doggett, 511 So. 2d 908, 1987 Miss. LEXIS 2612 (Miss. 1987).

When a person dies intestate his or her property passes in the manner provided by this section [Code 1942, § 468], unless there has been a statutory adoption of the child claiming the right of inheritance, and in the manner provided by the statute of adoption then in force. Brassiell v. Brassiell, 228 Miss. 243, 87 So. 2d 699, 1956 Miss. LEXIS 509 (Miss. 1956).

Where a testator bequeathed a portion of his estate to his brothers and sisters, with a share of any of brother or sister predeceasing the testator to go to his surviving child living at the time of the testator's death, but provided also that where a brother or sister left no children the share should go to surviving brothers and sisters in equal shares, and where none of his brothers and sisters survived the testator, a bequest to his sister who left no children surviving her, lapsed. Meyers v. Teichman, 219 Miss. 860, 70 So. 2d 17, 1954 Miss. LEXIS 395 (Miss. 1954).

Where the grantor conveyed land to his daughter for and during her natural life and after her death the remainder in fee simple of children of her body, and the daughter had two children who predeceased her, but left children of her own surviving them, and the daughter died intestate, the grandchildren of the daughter took fee simple estate per stirpes and not per capita. Rodgers v. Rodgers, 218 Miss. 655, 67 So. 2d 698, 1953 Miss. LEXIS 584 (Miss. 1953).

A chart sets forth relationships and degrees of kindred according to the civil law. Owen v. State, 255 Ala. 354, 51 So. 2d 541, 1951 Ala. LEXIS 2 (Ala. 1951).

Title remained in grantor after executing deed of trust, and, on his death, property descended to his heirs. Wright v. Wright, 160 Miss. 235, 134 So. 197, 1931 Miss. LEXIS 202 (Miss. 1931).

Where land was devised by will to a husband for life and he died before the testatrix, there being no life estate in the property at the time of her death, it vested at once on her death in her legal heirs. Harvey v. Johnson, 111 Miss. 566, 71 So. 824, 1916 Miss. LEXIS 339 (Miss. 1916).

Where an intestate decedent left surviving uncles and aunts and cousins the descendants of aunts, who had died in his lifetime, the uncles and aunts inherited his property to the exclusion of his cousins, under this section [Code 1942, § 468]. Grantham v. Statham, 83 Miss. 176, 35 So. 423, 1903 Miss. LEXIS 28 (Miss. 1903).

3. —Relatives of half blood.

Second cousins of the whole blood and a first cousin of the half blood were collateral kindred to the intestate, as against the contention that descendants of first cousins of the whole blood should take to the exclusion of a first cousin of the half blood. Toomey v. Turner, 184 Miss. 831, 186 So. 301, 1939 Miss. LEXIS 54 (Miss. 1939).

Surviving parent of an unmarried intestate dying without issue inherited his real estate to the exclusion of his half-blood kindred. Aycock v. Aycock, 119 Miss. 641, 81 So. 482, 1919 Miss. LEXIS 42 (Miss. 1919).

Illegitimate son of sister of whole blood took intestate's personalty to exclusion of children of sister of half blood. Davidson v. Brownlee, 114 Miss. 398, 75 So. 140, 1917 Miss. LEXIS 45 (Miss. 1917).

4. —Exempt property.

Bill attempting partition of exempt lands without widow's consent, not demurrable where it also asks accounting for timber cut by widow. Gavin v. Gavin, 116 Miss. 197, 76 So. 879, 1917 Miss. LEXIS 307 (Miss. 1917).

Homestead not subject to an execution for alimony. Jackson v. Coleman, 115 Miss. 535, 76 So. 545, 1917 Miss. LEXIS 230 (Miss. 1917).

Consent of widow without which exempt property cannot be partitioned, being without consideration, may be withdrawn in the absence of intervening estoppel, any time before the property has been divided. Tiser v. McCain, 113 Miss. 776, 74 So. 660, 1917 Miss. LEXIS 152 (Miss. 1917).

Exempt property of decedent descending to the widow with others is used by her so long as its income is used for her support, whether or not she resides on it. Tiser v. McCain, 113 Miss. 776, 74 So. 660, 1917 Miss. LEXIS 152 (Miss. 1917).

Bill for partition, alleging land not homestead nor exempt, held good against demurrer. Tiser v. McCain, 113 Miss. 776, 74 So. 660, 1917 Miss. LEXIS 152 (Miss. 1917).

RESEARCH REFERENCES

ALR.

Descent and distribution to and among cousins. 54 A.L.R.2d 1009.

Descent and distribution to and among uncles and aunts. 55 A.L.R.2d 643.

Descent and distribution from stepparents to stepchildren or vice versa. 63 A.L.R.2d 303.

Right of heir or devisee to have realty exonerated from lien thereon at expense of personal estate. 4 A.L.R.3d 1023.

Am. Jur.

23 Am. Jur. 2d, Descent and Distribution § 18.

Am. Jur. 2d, Desk Book, Document No. 184, Tables of descent and distribution – computation of degrees of kindred.

8A Am. Jur. Pl & Pr Forms (Rev), Descent and Distribution, Forms 1 et seq. (petition or application – determination of heirship).

CJS.

26B C.J.S., Descent and Distribution §§ 7, 8.

§ 91-1-5. Half-bloods.

There shall not be, in any case, a distinction between the kindred of the whole and half-blood, except that the kindred of the whole-blood, in equal degree, shall be preferred to the kindred of the half-blood in the same degree.

HISTORY: Codes, Hutchinson's 1848, ch. 44, art. 2 (50); 1857, ch. 60, art. 110; 1871, § 1949; 1880, § 1271; 1892, § 1544; 1906, § 1650; Hemingway's 1917, § 1382; 1930, § 1403; 1942, § 469.

Cross References — Proceedings pertaining to trusts and estates, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Applicability to illegitimates.

1. In general.

The nephews and nieces of an intestate decedent, who were children of his whole-blood brothers, succeeded to his entire estate to the exclusion of his half-blood sister, under §§ 91-1-5 and 91-1-3, since his whole-blood brothers would have been his sole and only surviving legal heirs to the exclusion of his half-blood sister, and their children occupied the same position as their parents, by right of representation. Jones v. Stubbs, 434 So. 2d 1362, 1983 Miss. LEXIS 2741 (Miss. 1983).

Under the rule of the civil law, a first cousin, although of the half-blood, is nearer in degree of kindred to an intestate than a second cousin of the whole-blood. Mississippi State Highway Dep't v. Meador, 184 Miss. 381, 185 So. 816, 186 So. 642, 1939 Miss. LEXIS 47 (Miss. 1939).

Term "brothers and sisters" embraces brothers and sisters of whole and half-blood. Darrow v. Moore, 163 Miss. 705, 142 So. 447, 1932 Miss. LEXIS 85 (Miss. 1932).

Surviving parent of unmarried intestate took his real estate to the exclusion of half-blood kindred. Aycock v. Aycock, 119 Miss. 641, 81 So. 482, 1919 Miss. LEXIS 42 (Miss. 1919).

The descendants of the brothers and sisters of the whole-blood take in exclusion of the brothers and sisters of the half-blood. Scott v. Terry, 37 Miss. 65, 1859 Miss. LEXIS 4 (Miss. 1859).

By the common law, the kindred of the half-blood could not inherit real property. The object of the statute was to change that rule. Those of the whole-blood are preferred to those of the half-blood; but if there be none of the whole-blood, then those of the half-blood inherit. Fatheree v. Fatheree, 1 Miss. 311, 1828 Miss. LEXIS 4 (Miss. 1828); Hulme v. Montgomery, 31 Miss. 105, 1856 Miss. LEXIS 41 (Miss. 1856).

2. Applicability to illegitimates.

Where proponents of a will never denied that contestants were the natural grandchildren of the testator, and where, although there was no record of a divorce between the testator's son, through whom the grandchildren sought to inherit, and his first wife, there was a ceremonial marriage between the son and his second wife, from which union the grandchildren were born, there was no impediment to their inheriting as lawful heirs-at-law of the testator's son. Webster v. Kennebrew, 443 So. 2d 850, 1983 Miss. LEXIS 3056 (Miss. 1983).

This section [Code 1942, § 469] and Code 1942, § 474, are in pari materia and should be construed together. Taylor v. Jackson, 194 Miss. 441, 12 So. 2d 144, 1943 Miss. LEXIS 62 (Miss. 1943).

This statute is applicable to illegitimates as well as to legitimates when determining blood relationship for the purpose of inheritance, and permits the rights of illegitimates inter sese to be determined on the same basis as if they were legitimate and some of them were related to the intestate as of the whole-blood and some of the half-blood. Taylor v. Jackson, 194 Miss. 441, 12 So. 2d 144, 1943 Miss. LEXIS 62 (Miss. 1943).

Where it appeared that the father of an intestate and the mothers of several groups of claimants to intestate's property were all illegitimate children of the same mother, but that the mother of one group had the same father as the intestate's father, the latter group was entitled to take the property to exclusion of the other groups of claimants, since, although children of an illegitimate, they were kindred of the whole-blood to the intestate, while the other groups, also being children of illegitimates, were kindred of the half-blood by reason of their mothers having a different father. Taylor v. Jackson, 194 Miss. 441, 12 So. 2d 144, 1943 Miss. LEXIS 62 (Miss. 1943).

The legitimate children of an illegitimate father were entitled to inherit from the half-sister of their father, who died intestate, regardless of whether such half-sister was legitimate or illegitimate, where the intestate had no kindred of the whole-blood. Malone v. Pope, 189 Miss. 46, 196 So. 319, 1940 Miss. LEXIS 109 (Miss. 1940).

Illegitimate son of sister of whole-blood took intestate's personalty to exclusion of children of sister of half-blood. Davidson v. Brownlee, 114 Miss. 398, 75 So. 140, 1917 Miss. LEXIS 45 (Miss. 1917).

RESEARCH REFERENCES

ALR.

Descent and distribution: rights of inheritance as between kindred of whole and half blood. 47 A.L.R.4th 561.

Am. Jur.

23 Am. Jur. 2d, Descent and Distribution §§ 71, 104-106.

9 Am. Jur. Proof of Facts, Pedigree, Proof No. 1 (establishing family relationship – testimony of party whose pedigree is in issue).

9 Am. Jur. Proof of Facts, Pedigree, Proof No. 2 (establishing family relationship – testimony of third person).

§ 91-1-7. Descent of property as between husband and wife.

If a husband die intestate and do not leave children or descendants of children, his widow shall be entitled to his entire estate, real and personal, in fee simple, after payment of his debts; but where the deceased husband shall leave a child or children by that or a former marriage, or descendants of such child or children, his widow shall have a child's part of his estate, in either case in fee simple. If a married woman die owning any real or personal estate not disposed of, it shall descend to her husband and her children or their descendants if she have any surviving her, either by a former husband or by the surviving husband, in equal parts, according to the rules of descent. If she have children and there also be descendants of other children who have died before the mother, the descendants shall inherit the share to which the parent would have been entitled if living, as coheirs with the surviving children. If she have no children or descendants of them, then the husband shall inherit all of her property.

HISTORY: Codes, Hutchinson's 1848, ch. 44, art. 3, 4; 1857, ch. 17, art. 1; 1871, § 1788; 1880, § 1771; 1892, § 1545; 1906, § 1651; Hemingway's 1917, § 1383; 1930, § 1404; 1942, § 470.

Cross References — Provision in will for husband or wife, see § 91-5-23 et seq. Proceedings pertaining to trusts and estates, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

ANALYSIS

1. In general; legality of marriage.
2. Rights of widow.
3. Rights of widower.
4. Rights of children.
5. Divorce or separation as affecting rights of surviving spouse.

1. In general; legality of marriage.

No right to property vests by virtue of the marriage relationship alone prior to entry of a judgment or decree granting equitable or other distribution pursuant to dissolution of the marriage; thus, the rights of alienation and the laws of descent and distribution are not affected by the recognition of marital assets. Ferguson v. Ferguson, 639 So. 2d 921, 1994 Miss. LEXIS 352 (Miss. 1994).

While this statute [Code 1972, § 91-1-7] controls the general descent of property as between husband and wife, the statute is not applicable to the descent of exempt property; Code 1972, § 91-1-19 specifically controls the descent of exempt property. Weaver v. Blackburn, 294 So. 2d 786, 1974 Miss. LEXIS 1828 (Miss. 1974).

In the absence of proof of a subsequent bigamous marriage which could work an estoppel, one spouse is not barred from inheriting from the other on account of his or her abandonment, desertion, nonsupport, or adultery, and evidence of a wife's adulterous conduct did not preclude her from taking her deceased husband's estate as his sole heir at law. Rowell v. Rowell, 251 Miss. 472, 170 So. 2d 267, 1964 Miss. LEXIS 365 (Miss. 1964).

Where testator's intention was that a class described as his heirs should be ascertained at the termination of a life estate given his widow, she does not take in virtue of this section [Code 1942, § 470]. Dailey v. Houston, 246 Miss. 667, 151 So. 2d 919, 1963 Miss. LEXIS 492 (Miss. 1963).

One who enters into a ceremonial marriage with another without obtaining a divorce from a former spouse is estopped from asserting a right to inherit from such former spouse. Harrison v. G. & K. Inv. Co., 238 Miss. 760, 115 So. 2d 918, 1959 Miss. LEXIS 546 (Miss. 1959), cert. denied, 363 U.S. 844, 80 S. Ct. 1614, 4 L. Ed. 2d 1728, 1960 U.S. LEXIS 822 (U.S. 1960).

Third ceremonial wife of deceased and his only child, the child of first ceremonial wife, are entitled to share deceased's estate equally under laws of descent and distribution in this state, when presumption that all prior marriages of deceased had been dissolved prior to third ceremonial marriage is not overcome by competent evidence to contrary. Wallace v. Herring, 207 Miss. 658, 43 So. 2d 100, 1949 Miss. LEXIS 377 (Miss. 1949).

Marriage between white person and Negro valid in the State of Illinois where it was contracted and the parties continued to live, will be recognized in this state to the extent of permitting one spouse to inherit property from the other in this state. Miller v. Lucks, 203 Miss. 824, 36 So. 2d 140, 1948 Miss. LEXIS 325 (Miss. 1948).

Code of 1892, §§ 4496, 1545 (Code 1942, §§ 668, 470), must be construed together in determining rights of widow renouncing will. Callicott & Norfleet v. Callicott, 90 Miss. 221, 43 So. 616, 1907 Miss. LEXIS 83 (Miss. 1907).

Where testator had portioned off to and accepted releases from 3 of his 6 children, widow upon renouncing will was entitled to a one-fourth part of the estate. Callicott & Norfleet v. Callicott, 90 Miss. 221, 43 So. 616, 1907 Miss. LEXIS 83 (Miss. 1907).

2. Rights of widow.

The recording of a deed from the defendants' predecessor's widow to the complainants' predecessor was the equivalent of actual knowledge by the defendant heirs that the complainants' predecessor claimed adversely to them, where by its terms the deed purported to convey the entire interest, and the legal presumption that one cotenant holds property for the benefit of his cotenants as well as for himself was refuted and an ouster was affected. Hardy v. Lynch, 258 So. 2d 414, 1972 Miss. LEXIS 1495 (Miss. 1972).

Where a cotenant's widow in possession claimed the property to the exclusion of the other cotenants for more than 10 years after the death of her husband, who had claimed the entirety of the property, and during such period the widow had received all benefits flowing from the land and had made all expenditures without accounting to anyone, there was the equivalent of an ouster of the other cotenants and she had clear full title by adverse possession, the fiduciary relationship usually presumed to exist between cotenants having no application here; since the circumstances surrounding the widow's acquisition of title completely negated any such relation to the extent that it was the equivalent of an ouster of the other cotenants. Bayless v. Alexander, 245 So. 2d 17, 1971 Miss. LEXIS 1349 (Miss. 1971).

Where a husband and wife lived together for approximately 40 years, had no children, and where the husband predeceased the wife by approximately eight years, the wife became the owner of the property of her husband and had every right to devise it in any manner that she desired so long as the devise was not contrary to public policy, and the fact that her holographic will referred to a request of her husband, was no more than an explanation as to her reason for devising the property as she did, and was not an expression of the testamentary intent of the husband. Carlisle v. Carlisle, 233 So. 2d 803, 1970 Miss. LEXIS 1680 (Miss. 1970).

Evidence of a wife's adulterous conduct did not preclude her from taking her deceased husband's estate as his sole heir at law. Rowell v. Rowell, 251 Miss. 472, 170 So. 2d 267, 1964 Miss. LEXIS 365 (Miss. 1964).

A Tennessee court decree adjudging complainant to be the widow of the deceased and awarding her $6,000 in full settlement of any and all rights in the decedent's estate and all rights to dower and homestead in the decedent's real property, and which vested out of complainant all interest in the described Tennessee real property, but made no mention of decedent's real property located in Mississippi, did not deprive complainant of her fee simple title to the Mississippi property, which she had acquired upon the death of a life tenant since the decedent left no children. Gillum v. Gillum, 230 Miss. 246, 92 So. 2d 665, 1957 Miss. LEXIS 364 (Miss. 1957).

Where the husband, as devisee under his mother's will, had been vested at the time of his death with a fee simple title to a one-fourth interest in a plantation, his wife succeeded to that interest. Martin v. Eslick, 229 Miss. 234, 90 So. 2d 635, 1956 Miss. LEXIS 604 (Miss. 1956).

Wife as devisee of the usufruct of land under husband's will, which made no further disposition, held entitled to absolute estate as heir upon death of husband without children or descendants. Lemon v. Rogge, 11 So. 470 (Miss. 1892).

3. Rights of widower.

Decedent's husband was entitled to inherit an interest in land owned by his wife, even though he had entered into a consent decree in Michigan in which he relinquished his rights as heir of his wife, where the parties did not intend the Michigan decree to cover Mississippi lands; the testimony of husband that he shot his wife accidentally was properly admitted in evidence as an exception to the dead man's statute; insofar as the shooting was not wilful, the husband was not barred from inheriting by statute. Bianchi v. Scott, 363 So. 2d 289, 1978 Miss. LEXIS 2191 (Miss. 1978).

Devise of a life estate in the whole of the property to husband does not militate against his inheriting a fraction of the remaining fee simple title which was not disposed of by the will. Williams v. Gooch, 208 Miss. 223, 44 So. 2d 57, 1950 Miss. LEXIS 241 (Miss. 1950).

Where testatrix devised a life estate in land to her husband then gave 50 per cent of the remainder in fee to two others leaving 50 per cent undisposed of, the undevised 50 per cent in fee descended to husband as sole heir at law of testatrix. Williams v. Gooch, 208 Miss. 223, 44 So. 2d 57, 1950 Miss. LEXIS 241 (Miss. 1950).

Husband is heir of wife, but not of wife's parents, and he inherits no interest in lands of wife's parents where wife predeceased parents, children of wife inheriting share of their mother. Dunaway v. McEachern, 37 So. 2d 767 (Miss. 1948).

Estate by curtesy abolished in 1880, and subsequent to that date land of wife passed to husband and children as tenants in common, and conveyance by husband vested grantee with an undivided interest. Hauer v. Davidson, 113 Miss. 696, 74 So. 621, 1917 Miss. LEXIS 147 (Miss. 1917).

4. Rights of children.

Son, one of ten adult heirs of deceased father, who paid to his mother $400 which was owing to father on purchase of homestead, there being no administrator and no agent appointed by heirs authorized to receive payment, is not entitled to be credited with $250 paid to mother as allowance to widow, as widow had only a one-tenth interest in this $400, in suit in which heirs claim balance due them on purchase price of land. Davis v. Davis, 205 Miss. 794, 39 So. 2d 486, 1949 Miss. LEXIS 465 (Miss. 1949).

Unadopted illegitimate child of deceased veteran who, while in army, declared in writing that child was his in order to obtain allotment for her, held not entitled to inherit share payable under veteran's war risk policy as "heir" within World War Veterans' Act construed in connection with Mississippi laws of descent and distribution, there being no conflict between federal and state laws. Moyse v. Laughlin, 177 Miss. 751, 171 So. 784, 1937 Miss. LEXIS 153 (Miss. 1937).

Word "child" means child with right to share in estate of intestate father; it does not include children portioned off or who have released their interest in the estate. Callicott & Norfleet v. Callicott, 90 Miss. 221, 43 So. 616, 1907 Miss. LEXIS 83 (Miss. 1907).

Children cannot have partition of exempt property while occupied or used by widow, nor an accounting by her for its use. Stevens v. Wilbourn, 88 Miss. 514, 41 So. 66, 1906 Miss. LEXIS 167 (Miss. 1906).

5. Divorce or separation as affecting rights of surviving spouse.

A decree of divorce from an insane wife, obtained by a husband who had previously entered into a ceremonial marriage with another, will not be disregarded in determining whether the husband may inherit because obtained to avoid a prosecution for bigamy. Harrison v. G. & K. Inv. Co., 238 Miss. 760, 115 So. 2d 918, 1959 Miss. LEXIS 546 (Miss. 1959), cert. denied, 363 U.S. 844, 80 S. Ct. 1614, 4 L. Ed. 2d 1728, 1960 U.S. LEXIS 822 (U.S. 1960).

Where the husband had legally married the intestate and they had lived together as man and wife in a home owned by the wife from the time of the marriage until two months prior to the wife's death when the husband left the home because of fear of the wife's brother, who had shot and driven the husband from the home, the husband was not estopped from asserting title to the home. Parsons v. Butler, 230 Miss. 830, 94 So. 2d 320, 1957 Miss. LEXIS 428 (Miss. 1957).

Contract between husband and wife in contemplation of divorce, whereby wife released all claims for alimony or property adjustment, held not to have affected rights of wife as widow where divorce was not granted before husband's death. Kirby v. Kent, 172 Miss. 457, 160 So. 569, 1935 Miss. LEXIS 151 (Miss. 1935).

RESEARCH REFERENCES

ALR.

Validity and effect of will clause disinheriting children if surviving spouse elects to take against will. 32 A.L.R.2d 895.

Right of illegitimate child to take under testamentary gift to "children". 34 A.L.R.2d 4.

Effect of divorce, separation, desertion, unfaithfulness, and the like, upon right to administer upon estate of spouse. 34 A.L.R.2d 876.

Separation agreement as barring rights of surviving spouse in other's estate. 34 A.L.R.2d 1020.

Abandonment, desertion, or refusal to support on part of surviving spouse as affecting marital rights in deceased spouse's estate. 13 A.L.R.3d 446.

Adultery on part of surviving spouse as affecting marital rights in deceased spouse's estate. 13 A.L.R.3d 486.

Validity of inter vivos trust established by one spouse which impairs the other spouse's distributive share or other statutory rights in property. 39 A.L.R.3d 14.

Conflict of laws regarding election for or against will, and effect in one jurisdiction of election in another. 69 A.L.R.3d 1081.

Effect of invalidity of provision conditioning testamentary gift upon divorce of beneficiary, on alternative provision conditioning gift upon spouse's death. 74 A.L.R.3d 1095.

Devolution of gift over upon spouse predeceasing testator where gift to spouse fails because of divorce. 74 A.L.R.3d 1108.

Rights in decedent's estate as between lawful and putative spouses. 81 A.L.R.3d 6.

Estoppel or laches precluding lawful spouse from asserting rights in decedent's estate as against putative spouse. 81 A.L.R.3d 110.

Am. Jur.

23 Am. Jur. 2d, Descent and Distribution § 109 et seq.

CJS.
26B C.J.S., Descent and Distribution §§ 67, 68 et seq.

Law Reviews.
1978 Mississippi Supreme Court Review: Criminal Law and Procedure. 50 Miss. L. J. 59, March 1979.

§ 91-1-9. Descent of trust estates.

If any cestui que trust shall die leaving a trust in lands, tenements, or hereditaments in fee simple or in freehold, the trust shall descend as real estate if not disposed of by will, or if not inconsistent with the declaration of the trust.

HISTORY: Codes, 1880, § 1272; 1892, § 1546; 1906, § 1652; Hemingway's 1917, § 1384; 1930, § 1405; 1942, § 471.

Cross References — Proceedings pertaining to trusts and estates, see Miss. R. Civ. P. 81.

§ 91-1-11. Personal estate to descend as real estate.

When any person shall die possessed of goods and chattels or personal estate not bequeathed, the same shall descend to and be distributed among his or her heirs in the same manner that real estate not devised descends.

HISTORY: Codes, Hutchinson's 1848, ch. 44, art. 2 (52); 1857, ch. 60, art. 111; 1871, § 1951; 1880, § 1273; 1892, § 1547; 1906, § 1653; Hemingway's 1917, § 1385; 1930, § 1406; 1942, § 472.

Cross References — Proceedings pertaining to trusts and estates, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.
The assignment to an insurance company by the widow of a claim for the destruction of an automobile owned by her deceased husband does not give the assignee any claim in preference to the creditors of the estate of the decedent. Potts v. Montgomery, 237 So. 2d 124, 1970 Miss. LEXIS 1505 (Miss. 1970).

Where no administrator is appointed, personalty descends to heir as if realty. Richardson v. Neblett, 122 Miss. 723, 84 So. 695, 1920 Miss. LEXIS 472 (Miss. 1920).

Illegitimate son of sister of whole-blood took intestate's personalty to exclusion of children of sister of half-blood. Davidson v. Brownlee, 114 Miss. 398, 75 So. 140, 1917 Miss. LEXIS 45 (Miss. 1917).

The representatives of deceased heirs are entitled to share with the living heirs a sum of money appropriated by Congress to the administrator of their common ancestor in payment of a claim against the government. Nutt v. Forsythe, 84 Miss. 211, 36 So. 247, 1904 Miss. LEXIS 28 (Miss. 1904).

An equitable right to a cause of action on a debt accruing to two or more persons by descent from the creditor is a joint right. Stauffer v. British & American Mortg. Co., 77 Miss. 127, 25 So. 299, 1899 Miss. LEXIS 46 (Miss. 1899).

RESEARCH REFERENCES

Am. Jur.
23 Am. Jur. 2d, Descent and Distribution §§ 20, 22.

CJS.
26B C.J.S., Descent and Distribution §§ 7, 8, 16.

§ 91-1-13. Estate of testator not disposed of by will to descend.

All estate, real and personal, not devised or bequeathed in the last will and testament of any person shall descend and be distributed in the same manner as the estate of an intestate; and the executor or administrator shall administer the same accordingly.

HISTORY: Codes, 1857, ch. 60, art. 112; 1871, § 1952; 1880, § 1274; 1892, § 1548; 1906, § 1654; Hemingway's 1917, § 1386; 1930, § 1407; 1942, § 473.

Cross References — Proceedings pertaining to trusts and estates, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Application in particular circumstances.

1. In general.

Devise of a life estate in the whole of the property to husband does not militate against his inheriting a fraction of the remaining fee simple title which was not disposed of by the will. Williams v. Gooch, 208 Miss. 223, 44 So. 2d 57, 1950 Miss. LEXIS 241 (Miss. 1950).

Where testatrix devised a life estate in land to her husband then gave 50 per cent of the remainder in fee to two others leaving 50 per cent undisposed of, the undevised 50 per cent in fee descended to husband as sole heir at law of testatrix. Williams v. Gooch, 208 Miss. 223, 44 So. 2d 57, 1950 Miss. LEXIS 241 (Miss. 1950).

In suit to confirm title to land, seeking construction of will to effect that it did not convey title to the land because it was devised to no named legatees, all the beneficiaries should have been under valid process. Dorsey v. Sullivan, 199 Miss. 602, 24 So. 2d 852, 1946 Miss. LEXIS 231 (Miss. 1946).

When no administrator is appointed, or necessary, personal property descends directly to heir the same as real property. Richardson v. Neblett, 122 Miss. 723, 84 So. 695, 1920 Miss. LEXIS 472 (Miss. 1920).

2. Application in particular circumstances.

Property that a Chapter 13 debtor inherited from her mother, pursuant to Miss. Code Ann. § 91-1-3, before the debtor declared bankruptcy was part of the debtor's bankruptcy estate. The property passed to the debtor and her siblings when their mother died, the debtor lived on the property, and she had a possessory interest in the property that was sufficient to satisfy the requirements of 11 U.S.C.S. § 541. Jackson v. Priority Trs. Servs. of Miss. L.L.C. (In re Jackson), 392 B.R. 666, 2008 Bankr. LEXIS 2239 (Bankr. S.D. Miss. 2008).

§ 91-1-15. Descent among illegitimates; definitions.

(1) The following terms shall have the meaning s ascribed to them herein:

(a) "Remedy" means the right of an illegitimate to commence and maintain a judicial proceeding to enforce a claim to inherit property from the estate of the natural mother or father of such illegitimate, said claim having been heretofore prohibited by law, or prohibited by statutes requiring marriage between the natural parents, or restrained, or enjoined by the order or process of any court in this state.

(b) "Claim" means the right to assert a demand on behalf of an illegitimate to inherit property, either personal or real, from the estate of the natural mother or father of such illegitimate.

(c) "Illegitimate" means a person who at the time of his birth was born to natural parents not married to each other and said person was not legitimized by subsequent marriage of said parents or legitimized through a proper judicial proceeding.

(d) "Natural parents" means the biological mother or father of the illegitimate.

(2) An illegitimate shall inherit from and through the illegitimate's mother and her kindred, and the mother of an illegitimate and her kindred shall inherit from and through the illegitimate according to the statutes of descent and distribution. However, if an illegitimate shall die unmarried and without issue, and shall also predecease the natural father, the natural mother or her kindred shall not inherit any part of the natural father's estate from or through the illegitimate. In the event of the death of an illegitimate, unmarried and without issue, any part of the illegitimate's estate inherited from the natural father shall be inherited according to the statutes of descent and distribution.

(3) An illegitimate shall inherit from and through the illegitimate's natural father and his kindred, and the natural father of an illegitimate and his kindred shall inherit from and through the illegitimate according to the statutes of descent and distribution if:

(a) The natural parents participated in a marriage ceremony before the birth of the child, even though the marriage was subsequently declared null and void or dissolved by a court; or

(b) There has been an adjudication of paternity or legitimacy before the death of the intestate; or

(c) There has been an adjudication of paternity after the death of the intestate, based upon clear and convincing evidence, in an heirship proceeding under Sections 91-1-27 and 91-1-29. However, no such claim of inheritance shall be recognized unless the action seeking an adjudication of paternity is filed within one (1) year after the death of the intestate or within ninety (90) days after the first publication of notice to creditors to present their claims, whichever is less; and such time period shall run notwithstanding the minority of a child. This one-year limitation shall be self-executing and may not be tolled for any reason, including lack of notice. If an administrator is appointed for the estate of the intestate and notice to creditors is given, then the limitation period shall be reduced to ninety (90) days after the first publication of notice, if less than one (1) year from the date of the intestate's death; provided actual, written notice is given to all potential illegitimate heirs who could be located with reasonable diligence.

No claim of inheritance based on an adjudication of paternity, after death of the intestate, by a court outside the State of Mississippi shall be recognized unless:

(i) Such court was in the state of residence of the intestate at the time of the intestate's death;

(ii) The action adjudicating paternity was filed within ninety (90) days after the death of the intestate;

(iii) All known heirs were made parties to the action; and

(iv) Paternity or legitimacy was established by clear and convincing evidence.

(d) The natural father of an illegitimate and his kindred shall not inherit:

(i) From or through the child unless the father has openly treated the child as his, and has not refused or neglected to support the child.

(ii) Any part of the natural mother's estate from or through the illegitimate if the illegitimate dies unmarried and without issue, and also predeceases the natural mother. In the event of the death of an illegitimate, unmarried and without issue, any part of the illegitimate's estate inherited from the mother shall be inherited according to the statutes of descent and distribution.

A remedy is hereby created in favor of all illegitimates having any claim existing prior to July 1, 1981, concerning the estate of an intestate whose death occurred prior to such date by or on behalf of an illegitimate or an alleged illegitimate child to inherit from or through its natural father and any claim by a natural father to inherit from or through an illegitimate child shall be brought within three (3) years from and after July 1, 1981, and such time period shall run notwithstanding the minority of a child.

The remedy created herein is separate, complete and distinct, but cumulative with the remedies afforded illegitimates as provided by the Mississippi Uniform Law on Paternity; provided, however, the failure of an illegitimate to seek or obtain relief under the Mississippi Uniform Law on Paternity shall not diminish or abate the remedy created herein.

(4) The children of illegitimates and their descendants shall inherit from and through their mother and father according to the statutes of descent and distribution.

(5) Nothing in this section shall preclude the establishment of paternity solely for the purpose of the illegitimate receiving social security benefits on behalf of the illegitimate's natural father after one (1) year following the natural father's death.

HISTORY: Codes, Hutchinson's 1848, ch. 35, art. 2 (4); 1857, ch. 60, art. 115; 1871, § 1955; 1880, § 1275; 1892, § 1549; 1906, § 1655; Hemingway's 1917, § 1387; 1930, § 1408; 1942, § 474; Laws, 1924, ch. 162; Laws, 1981, ch. 529, § 1; Laws, 1983, ch. 339; Laws, 2005, ch. 543, § 1; Laws, 2008, ch. 388, § 1, eff from and after July 1, 2008.

Editor's Notes — The Preamble to Chapter 339, Laws, 1983, provides as follows: "WHEREAS, The Mississippi Legislature passed an act amending Section 91-1-15, Mississippi Code of 1972, and other sections of said code pertaining to the rights and claims of illegitimates, during the 1981 Regular Session, said amendment being effective from and after July 1, 1981; and

"WHEREAS, Section 91-1-15 was so amended to provide for intestate succession among an illegitimate and the natural father and his kindred with certain limitations, and to afford unto all illegitimates without classification a remedy whereby they could enforce their substantive rights and claims of intestate succession as provided for in said amendment; and

"WHEREAS, the Legislature recognized that the decisions and statutes of this state existing prior to said amendment placed an insurmountable barrier to inheritance by illegitimates when compared to the rights of a legitimate person, and that said decisions and statutes effectively barred an unnecessarily large number of illegitimates from inheritance through their natural father as a result of certain classifications into which the illegitimate may be categorized in violation of equal protection under the law; and

"WHEREAS, it now appears that there is confusion as to the legislative intent in amending Section 91-1-15, Mississippi Code of 1972, and said section is now interpreted by some segments of the judiciary to mean that the Legislature did not intend to create a new, separate and distinct remedy for the benefit of all illegitimates without any classification and said amendment as now codified in Section 91-1-15, Mississippi Code of 1972, is interpreted by some segments of the judiciary to be prospective only rather than retrospective and prospective in effect and is interpreted not to have created a new, separate and distinct remedy for the claims of all illegitimates without classification; and

"WHEREAS, the Legislature recognized at the time it was considering said amendment, that by creating said remedy the Legislature was opening the door to the possible litigation of stale or fraudulent claims and that a further effect of bestowing said remedy upon all illegitimates would possibly be to create a certain amount of confusion and uncertainty as to the status of titles to real property; however, the Legislature intended to bestow upon illegitimates a new and additional remedy whereby such illegitimates could maintain their rights of inheritance notwithstanding such interests of the state in preventing stale and fraudulent claims and avoiding uncertainty as to the titles of real property and, accordingly, the Legislature enacted appropriate periods of limitations within which illegitimates could bring their claims;.

"NOW, THEREFORE, in order to eliminate any ambiguity in Section 91-1-15, Mississippi Code of 1972, and to conform said section to express the true legislative intent,

"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:"

Cross References — Computation of relationship according to civil law, see §§ 1-3-71, 1-3-73.

Effect of establishment of right to inherit from deceased under this section on right to maintain action for injuries producing death, see § 11-7-13.

Mississippi Uniform Law on Paternity generally, see §§ 93-9-1 through 93-9-49.

Proceedings pertaining to trusts and estates, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Legitimation of children born out of wedlock.
3. Inheritance by illegitimates.
4. Inheritance through illegitimates.

1. In general.

Individual overcame a presumption that a man married to his mother when he was born was his biological father as his mother testified the decedent was his father, and his aunts and other documentary evidence supported that conclusion.

Smith v. Bell, 876 So. 2d 1087, 2004 Miss. App. LEXIS 611 (Miss. Ct. App. 2004).

Father's claim against his unborn child's estate was barred by his failure to comply with Miss. Code Ann. § 91-1-15(3)(c); the father had taken no action to be declared the father of the child within one year of her death and there was no evidence that the administratrix took any action as an administratrix de son tort prior to May 31, 2000. Tew v. Estate of Doe, 859 So. 2d 347, 2003 Miss. LEXIS 599 (Miss. 2003).

Deceased musician's half-sister became executrix de son tort of decedent's unprobated estate by entering agreement, in which she purported to be sister and only surviving heir of decedent, for assignment of decedent's works, photographs, and materials in exchange for share of royalties. Johnson v. Harris (In re Estate of Johnson), 705 So. 2d 819, 1997 Miss. LEXIS 381 (Miss. 1997), cert. denied, Harris v. Johnson, 522 U.S. 1109, 118 S. Ct. 1037, 140 L. Ed. 2d 104, 1998 U.S. LEXIS 888 (U.S. 1998).

Status as executrix de son tort, in favor of alleged illegitimate child of deceased musician, was assumed when irrevocable power of attorney was accepted from decedent's half-sister after half-sister had assigned all rights to musician's copyrights, as well as by later accepting appointment as personal representative of half-sister's estate. Johnson v. Harris (In re Estate of Johnson), 705 So. 2d 819, 1997 Miss. LEXIS 381 (Miss. 1997), cert. denied, Harris v. Johnson, 522 U.S. 1109, 118 S. Ct. 1037, 140 L. Ed. 2d 104, 1998 U.S. LEXIS 888 (U.S. 1998).

Since personal representative of decedent was expressly authorized by statute to commence wrongful death action for benefit of all heirs entitled to recover, personal representative had sufficient standing to determine heirship of testator's reputed illegitimate children for purposes of wrongful death statute. Jones v. Estate of Richardson (In re Estate of Richardson), 695 So. 2d 587, 1997 Miss. LEXIS 240 (Miss. 1997).

The administrator of an estate is required to provide actual notice to known or reasonably ascertainable legitimate children who are potential heirs and whose claims would be barred by the running of the 90-day period from the notice of publication to creditors under the nonclaim statute, § 91-1-15(3)(c). To hold otherwise would encourage administrators and executors to benefit as heirs at law by setting in motion the shortest filing period which, unbeknownst to the potential heir, has significantly shortened the time for the potential heir to meet with the statutory requirements to inherit as an heir. Smith v. Estate of King, 579 So. 2d 1250, 1991 Miss. LEXIS 250 (Miss. 1991).

A claimant's timely filing, 3 days after the decedent's death, of a sworn Petition for Letters of Administration in which he alleged that he was the son and sole surviving heir of the deceased, sufficiently complied with the provisions of §§ 91-1-15, 91-1-27 and 91-1-29 and therefore his claim of heirship was not barred by the statute of limitations of § 91-1-15(3)(c). The fact that the claimant did not precisely state that he was the "illegitimate" or "born-out-of-wedlock" son, as opposed to simply declaring himself to be "the son," was a matter of semantics which made no difference; the indication that he was the sole surviving heir was sufficiently clear. Wash v. McIntosh, 566 So. 2d 1208 (Miss. 1990).

A party may combine a suit to determine heirship with a suit to contest a will. Dees v. Estate of Moore, 562 So. 2d 109, 1990 Miss. LEXIS 257 (Miss. 1990).

Section 91-1-15(3)(c), which requires that an action seeking adjudication of paternity be filed within 90 days after the first publication of notice to creditors, does not require that notice be given within the 90-day period. An out-of-wedlock child who brought a claim for heirship after her father's death complied with the filing requirement by petitioning to be appointed administratrix and seeking to be declared the sole and only heir-at-law, where other persons, who would inherit from the decedent, had actual knowledge of the claim of heirship as evidenced by their hiring of an attorney, and, before the estate was closed, were properly allowed by the court to file their claim. The summons by publication requirement of § 91-1-29 was met, and all parties were given their day in court. This procedure sufficiently complied with the notice requirements of § 91-1-27 and § 91-1-29, and the filing requirements of § 91-1-15(3)(c). Perkins v. Thompson, 551 So. 2d 204, 1989 Miss. LEXIS 360 (Miss. 1989).

The six-year statute of limitations is inapplicable to suits brought by illegitimates under § 91-1-15 whose cause of action accrued prior to July 1, 1981. Re In re Estate of Smiley, 530 So. 2d 18, 1988 Miss. LEXIS 333 (Miss. 1988).

A prior action on a petition to determine heirship, in which the petitioners sought to establish that they were the children of the deceased from a common law marriage, did not bar, under the doctrine of res judicata, the children's action to share in the decedent's estate pursuant to § 91-1-15 since that statute as amended in 1981 created a totally new cause of action in favor of illegitimate children. In re Estate of Stutts, 529 So. 2d 177, 1988 Miss. LEXIS 352 (Miss. 1988).

When mother of decedent's alleged illegitimate child moved to intervene in case brought under Federal Employers Liability Act, it was incumbent on her to file petition in chancery court under § 91-1-27 and proceed under § 91-1-29, and intervention should have been denied because these statutes had not been followed; where parties agreed for circuit judge to hear issue of paternity on merits, case would not be reversed because wrong court decided issue; on merits, circuit judge was correct in dismissing proposed intervention because there was no clear and convincing evidence that decedent was child's natural father. Ivy v. Illinois C. G. R. Co., 510 So. 2d 520, 1987 Miss. LEXIS 2619 (Miss. 1987).

Mississippi law compels equal treatment of legitimates and illegitimates, and illegitimate child is therefore entitled to social security benefits. Jones v. Heckler, 754 F.2d 519, 1985 U.S. App. LEXIS 13727 (4th Cir. 1985).

Under the terms of § 91-1-15, the Department of Welfare, which had the authority under §§ 43-19-31 and 43-19-35 to institute paternity proceedings to obtain repayment for support of a dependant child under the Aid to Dependent Children program (ADC) from the person legally obligated to pay that support, would be held to a standard of proof by preponderance of the evidence where the proceeding was brought prior to the death of the putative father, rather than the standard of clear and convincing evidence that applies to an adjudication after the death of the father to establish heirship. Ivy v. State Dep't of Public Welfare, 449 So. 2d 779, 1984 Miss. LEXIS 1694 (Miss. 1984).

In a proceeding to determine heirship, the trial court erred in declaring § 91-1-15 unconstitutional of its own volition, where appellee, in his pleadings, did not claim that he was entitled to inherit from the decedent as his illegitimate son, and did not attack the constitutionality of the statute. Witt v. Mitchell, 437 So. 2d 63, 1983 Miss. LEXIS 2859 (Miss. 1983).

The chancellor erred in passing upon the constitutionality of the statute where the issue of constitutionality had not been specially pleaded. Estate of Miller v. Miller, 409 So. 2d 715, 1982 Miss. LEXIS 1862 (Miss. 1982).

A Section of the Illinois Probate Act barring illegitimate children to inherit by intestate succession from their fathers violated the Equal Protection Clause, although not a "suspect classification", a statutory classification based on illegitimacy must, at minimum, bear some rational relationship to a legitimate state purpose, in view of which the provision in question could not be justified on the ground that it promotes legitimate family relationships since a state may not attempt to influence the actions of men and women by imposing sanctions on children born of their relationships, nor do the difficulties of proving paternity in some situations justify the total statutory disinheritance of illegitimate children whose fathers die intestate. The fact that an illegitimate child's father could have provided for her by making a will did not save the provision from invalidity. Finally, the provision could not stand validated on the theory that it represents the legislature's attempt to mirror the intent of the state's decedents. Trimble v. Gordon, 430 U.S. 762, 97 S. Ct. 1459, 52 L. Ed. 2d 31, 1977 U.S. LEXIS 77 (U.S. 1977).

A state's intestate succession statutes which provide that an illegitimate child, acknowledged but not legitimated by the father, cannot claim the right of a legitimate child and may take the father's property only to the exclusion of the state when the father has left no descendants, ascendants, collateral relatives, or surviving wife, while legitimate children have a right of forced heirship in the father's estate, which statutes have the effect of barring an acknowledged illegitimate child from sharing in the father's estate with surviving collateral relatives, are not violative of constitutional due process and equal protection provisions, such statutes having a rational basis in the state's interest in promoting family life and in directing the disposition of property left within the state. Trimble v. Gordon, 430 U.S. 762, 97 S. Ct. 1459, 52 L. Ed. 2d 31, 1977 U.S. LEXIS 77 (U.S. 1977).

This section [Code 1942, § 474], being in derogation of the common law, must be strictly construed. Akers v. Estate of Johnson, 236 So. 2d 437, 1970 Miss. LEXIS 1493 (Miss. 1970).

This section [Code 1942, § 474] and Code 1942, § 469, are in pari materia and should be construed together. Taylor v. Jackson, 194 Miss. 441, 12 So. 2d 144, 1943 Miss. LEXIS 62 (Miss. 1943).

2. Legitimation of children born out of wedlock.

Chancery court did not err in determining an illegitimate child was the natural daughter of a decedent who died intestate because there was evidence the putative father openly acknowledged and treated the child as his natural daughter, as exhibited by declarations the putative father made to others outside the family and by the fatherly conduct he bestowed on the child since the time she was a young girl; the weight to be given the DNA results, which were inconclusive as to paternity, was for the chancellor. In re Estate of Kendrick v. Gorden, 46 So. 3d 386, 2010 Miss. App. LEXIS 585 (Miss. Ct. App. 2010).

Although an intestate decedent acknowledged an illegitimate daughter by spoken words and actions, this acknowledgment of possible paternity was insufficient under Miss. Code Ann. § 91-1-15(3) where the paternity was never adjudicated by a court of law within the appropriate time limits. Prout v. Williams, 55 So. 3d 195, 2011 Miss. App. LEXIS 21 (Miss. Ct. App. 2011).

There is no statutory requirement that putative father acknowledge child in order for child to establish its right to inherit, although open acknowledgment has great bearing in determining factual issue of paternity. Ivy v. Illinois C. G. R. Co., 510 So. 2d 520, 1987 Miss. LEXIS 2619 (Miss. 1987).

Under former provisions of the statute, in an action by an illegitimate child demanding that she be declared the heir of her natural father, capable of inheriting from him under the Mississippi laws of descent and distribution, the order entered in favor of the illegitimate daughter would be reversed and the suit dismissed where the time for bringing the action was six years from the date of the daughter's majority (§ 15-1-49) but the action was not commenced until 18 years after that date. Knight v. Moore, 396 So. 2d 31, 1981 Miss. LEXIS 1984 (Miss.), cert. denied, 454 U.S. 817, 102 S. Ct. 95, 70 L. Ed. 2d 86, 1981 U.S. LEXIS 3122 (U.S. 1981).

Any child legitimized by Code 1972, § 91-1-15 is a child of the marriage within the meaning of Code 1972, § 93-11-65. Harper v. Harper, 300 So. 2d 132, 1974 Miss. LEXIS 1602 (Miss. 1974).

In a proceeding on a petition by an alleged son seeking to be declared the sole heir of a decedent, where the decedent and the petitioner's mother were married and the alleged father acknowledged that the petitioner, born out of wedlock, was his son, and the alleged father was subsequently adjudicated non compos mentis and had a guardian appointed for his estate not long after the marriage and acknowledgment, the petitioner became the alleged father's sole heir at time of his death. Nickles v. Nickles, 247 So. 2d 836, 1971 Miss. LEXIS 1461 (Miss. 1971).

Where proof is clear, convincing, and unambiguous that the decedent acknowledged and believed over a long period of time that a child, conceived by a woman whom he subsequently married, was his daughter, she is entitled to be regarded as one of his heirs at law and to participate in his estate. Crosby v. Triplett, 195 So. 2d 69, 1967 Miss. LEXIS 1427 (Miss. 1967).

Where evidence clearly shows a decedent's recognition and acknowledgment of plaintiff as his child over a long period of time, by statements, acts, and abiding belief that she was his daughter, it was incumbent upon the defendant to contradict or refute by credible, clear, and convincing evidence that no such acknowledgment ever took place, and in the absence of such a refutation the child is entitled to be acknowledged as one of decedent's heirs at law. Crosby v. Triplett, 195 So. 2d 69, 1967 Miss. LEXIS 1427 (Miss. 1967).

Where a decree of chancery court annulled a marriage between an employee and mother of child who was born out of wedlock before such marriage, and the decree made the marriage void ab initio, on the ground that it had been entered into as result of coercion and duress and the parties had not lived together as man and wife, the child could not claim it was legitimate under the provisions of this section [Code 1942, § 474]. Stanford v. Stanford, 219 Miss. 236, 68 So. 2d 275, 1953 Miss. LEXIS 385 (Miss. 1953).

Under a former version of this statute, for one born out of wedlock in another state to become a lawful heir as the child of a decedent in this state, it must be shown first that such person was the natural child of decedent, that both parents were later lawfully married and that the father acknowledged such person as his child in this state. Thomas v. Thomas, 200 Miss. 96, 25 So. 2d 710, 1946 Miss. LEXIS 271 (Miss. 1946), and see In re Estate of Stutts, 529 So. 2d 177, 1988 Miss. LEXIS 352 (Miss. 1988).

Under former provisions of this statute, in a suit by appellee to establish sole heirship by reason of being the legitimate daughter of deceased, evidence was insufficient to show that appellee, born in another state prior to marriage of her mother with decedent, was the natural child of deceased or that he ever acknowledged her as his own daughter. Thomas v. Thomas, 200 Miss. 96, 25 So. 2d 710, 1946 Miss. LEXIS 271 (Miss. 1946), and see In re Estate of Stutts, 529 So. 2d 177, 1988 Miss. LEXIS 352 (Miss. 1988).

Where decedent and his alleged surviving widow, in good faith and with the bona fide intention of becoming man and wife, had entered into a ceremonial marriage in 1896 under a regular license, thinking that his first wife was dead, when, in fact, she did not die until 1923, such marriage became lawful and valid upon the death of the first wife, without any new or different understanding or intention between them, so that second wife was his lawful widow and their offspring became and were legitimate children, entitled to share in his estate with the offspring of the first marriage. Johnson v. Johnson, 196 Miss. 768, 17 So. 2d 805, 1944 Miss. LEXIS 255 (Miss. 1944).

3. Inheritance by illegitimates.

Deceased child's father could not recover wrongful death benefits from the child because the father failed to establish the requirements of the statute; the father never met child or introduced the child to his family, he was not listed on the child's birth certificate, he neglected to support the child, and he denied paternity and challenged the mother's efforts to obtain child support and social security benefits from him. Perkins v. Nelson (In re Estate of Nelson), 266 So. 3d 1008, 2018 Miss. App. LEXIS 350 (Miss. Ct. App. 2018).

Chancellor did not err in determining that a father's children could not recover wrongful death benefits from his deceased child because the father did not meet the requirements of the statute; the deceased child's sole wrongful death beneficiary was his mother, and she was entitled to the settlement proceeds deriving from his wrongful death. Perkins v. Nelson (In re Estate of Nelson), 266 So. 3d 1008, 2018 Miss. App. LEXIS 350 (Miss. Ct. App. 2018).

Miss. Code Ann. § 91-1-15(3)(c)'s 90-day limitations period for an illegitimate child to seek a determination of paternity was tolled while the child did not have notice of the estate proceeding, but it began to run when he filed a motion to remove the administrator and expired 90 days later, over a month before he sought a paternity determination. In re Estate of Elmore, 150 So. 3d 709, 2013 Miss. App. LEXIS 795 (Miss. Ct. App. 2013), aff'd on other grounds, 150 So. 3d 700, 2014 Miss. LEXIS 547 (Miss. 2014).

Where an illegitimate daughter of an intestate decedent did not follow the plain language of Miss. Code Ann. § 91-1-15(3), she had no claim to the decedent's estate even though the decedent executed a delayed birth certificate because the birth certificate did not meet the requirements for adjudication of paternity under § 91-1-15(3). Prout v. Williams, 55 So. 3d 195, 2011 Miss. App. LEXIS 21 (Miss. Ct. App. 2011).

Miss. Code Ann. § 91-1-15 does require certain criteria, including an option to prove paternity of any illegitimate children within a restricted period after the putative father's death, Miss. Code Ann. § 91-1-15 (2004); these requirements place a higher burden on illegitimate children to inherit from their fathers than legitimate children. However, the State has a legitimate interest in protecting the family and the estates of the deceased by requiring adjudication of paternity within a reasonable timeframe; the purpose of § 91-1-15 in the context of intestate succession is to (1) avoid litigation of stale or fraudulent claims, (2) cause fair and just disposal of property, and (3) facilitate repose of title to real property. In re Estate of McCullough v. Yates, 32 So. 3d 403, 2010 Miss. LEXIS 82 (Miss. 2010).

It is true that illegitimate children do have the right to inherit from their natural fathers; nonetheless, the illegitimate child must prove paternity by clear and convincing evidence, Miss. Code Ann. § 91-1-15(3)(c) (1994). Further, the child must make his claim to the estate of his father within one year from the time of his father's death, Miss. Code Ann. § 91-1-15 (1994). In re Estate of McCullough v. Yates, 32 So. 3d 403, 2010 Miss. LEXIS 82 (Miss. 2010).

Appellants failed properly to adjudicate themselves as the illegitimate children of their putative father in the time prescribed by Miss. Code Ann. § 91-1-15 and as such, the petition to be determined heirs of the decedent was barred by the time provision of § 91-1-15; additionally, § 91-1-15 did not violate the Equal Protection Clause or the Due Process Clause of the United States Constitution. Further, appellants were not deprived of either their procedural or substantive due process rights as Mississippi had a legitimate state interest in the legislation propounded in § 91-1-15, therefore, the statute did not violate any substantive due process rights; in addition, appellants had notice of the putative father's death and would have been afforded a hearing for adjudication of paternity, however, they failed to make such a petition within the statutory limits of § 91-1-15. In re Estate of McCullough v. Yates, 32 So. 3d 403, 2010 Miss. LEXIS 82 (Miss. 2010).

Language of Miss. Code Ann. § 93-9-28 satisfies the requirements of Miss. Code Ann. § 91-1-15(3)(a), such that the minor can inherit from his natural father where the father has executed an acknowledgment of paternity; therefore, substantial evidence supported a finding that a decedent's illegitimate minor son was his sole heir at law because, although the son's mother did not institute paternity proceedings within the required time under Miss. Code Ann. § 91-1-15, the father acknowledged paternity pursuant to Miss. Code Ann. § 93-9-28 before his death. In re Estate of Farmer, 964 So. 2d 498, 2007 Miss. LEXIS 516 (Miss. 2007).

Decedent's administratrix's failure to notify decedent's illegitimate children of the administration of their father's estate resulted in tolling of the 90-day statute. In re Estate of Thomas, 883 So. 2d 1173, 2004 Miss. LEXIS 1269 (Miss. 2004).

Illegitimate children's claim that the administratrix's failure to provide them with actual notice tolled the running of the one-year statute of limitations could not be supported and they were barred from recovery under the decedent's estate. In re Estate of Thomas, 881 So. 2d 257, 2003 Miss. App. LEXIS 996 (Miss. Ct. App. 2003), rev'd, 883 So. 2d 1173, 2004 Miss. LEXIS 1269 (Miss. 2004).

Claim for heirship was barred because the alleged illegitimate son filed the claim more than 18 years after the father's death. Delaying out of respect for the widow did not excuse failing to take timely action to establish paternity. Mann v. Mann, 853 So. 2d 1217, 2003 Miss. LEXIS 412 (Miss. 2003).

The plaintiff's claim that she was the illegitimate child and sole heir of the decedent was barred by the statute where she failed to assert her claim until 14 years after the death of the decedent, notwithstanding her assertion that she was too young at the time of his death and that she did not know any better than to wait to stake any claim she might have had until after the death of his alleged common law wife. In re Estates of Davidson, 794 So. 2d 261, 2001 Miss. App. LEXIS 75 (Miss. Ct. App. 2001).

Evidence was sufficient to support a chancellor's determination that the appellee was the illegitimate son of a jazz musician who died in 1938. Harris v. Johnson (In re Estate of Johnson), 767 So. 2d 181, 2000 Miss. LEXIS 151 (Miss. 2000), cert. denied, 532 U.S. 959, 121 S. Ct. 1489, 149 L. Ed. 2d 376, 2001 U.S. LEXIS 2752 (U.S. 2001).

The appellants failed to meet their burden of proof by clear and convincing evidence that they were the illegitimate twin children of the decedent where the chancellor considered both genetic evidence of paternity as well as non-genetic or social evidence. In re Estate of Grubbs v. Woods, 753 So. 2d 1043, 2000 Miss. LEXIS 25 (Miss. 2000).

The administratrix of an estate had sufficient actual knowledge of the potential right of heirship of a child to have required her, within a reasonable time after the child's birth, to comply with the formalities of §§ 91-1-27 and 91-1-29 by making the child a party to the administration proceeding; therefore, the administratrix was precluded from raising the 90 day time bar set out in subsection (3)(c) of this section. Balsara v. Adams (In re Estate of Brewer), 755 So. 2d 1108, 1999 Miss. App. LEXIS 255 (Miss. Ct. App. 1999).

Evidence that both executrixes de son tort held themselves out as representatives of deceased musician's estate and took actions to chill interest of copyright purchasers in locating musician's rightful heirs waived three-year statutory bar to claim by musician's alleged illegitimate son; executrixes de son tort breached duty to act for rightful heirs of musician, rather than for themselves. Code 1972, § 91-1-15(d)(ii). Johnson v. Harris (In re Estate of Johnson), 705 So. 2d 819, 1997 Miss. LEXIS 381 (Miss. 1997), cert. denied, Harris v. Johnson, 522 U.S. 1109, 118 S. Ct. 1037, 140 L. Ed. 2d 104, 1998 U.S. LEXIS 888 (U.S. 1998).

To be declared heirs, illegitimate children of testator were required to establish paternity by clear and convincing evidence. Jones v. Estate of Richardson (In re Estate of Richardson), 695 So. 2d 587, 1997 Miss. LEXIS 240 (Miss. 1997).

Chancery court was required to hold hearing regarding personal representative's petition to determine heirship of testator's reputed illegitimate children. Jones v. Estate of Richardson (In re Estate of Richardson), 695 So. 2d 587, 1997 Miss. LEXIS 240 (Miss. 1997).

Chancellor abused his discretion in failing to set aside order determining heirship of testator's reputed illegitimate children, which was entered without formal hearing on matter. Jones v. Estate of Richardson (In re Estate of Richardson), 695 So. 2d 587, 1997 Miss. LEXIS 240 (Miss. 1997).

The failure of the illegitimate children of a decedent to assert any claim in the decedent's estate until after the expiration of 90 days from the date of the first publication of notice to creditors did not bar their claim of heirship or wrongful action where the petition for letters of administration specifically named the illegitimate children as the natural children of the decedent and the administratrix failed to give them notice of the letters' issuance. Leflore v. Coleman, 521 So. 2d 863, 1988 Miss. LEXIS 170 (Miss. 1988).

A minor seeking to be declared an heir of the decedent as an illegitimate daughter and to share in the estate should have been allowed to amend her complaint to allege that the widow and former executrix knew of the existence of the minor as an illegitimate child of the decedent, but fraudulently failed to so inform the court, notwithstanding that the minor's petition was filed more than 90 days after the publication of notice to the creditors of the estate. Smith v. Estate of King, 501 So. 2d 1120, 1987 Miss. LEXIS 2287 (Miss. 1987).

Illegitimate child could inherit from their natural father, who died intestate in 1969. Holloway v. Jones, 492 So. 2d 573, 1986 Miss. LEXIS 2527 (Miss. 1986).

Illegitimate grandson is entitled to interest in estate of paternal grandmother where grandson's answer to petition filed by daughter of grandmother seeking to be adjudicated sole heir at law alleges that grandson is illegitimate son of grandmother's deceased son and where parties have stipulated that illegitimate grandson is indeed such and that grandson and daughter are only parties interested in estate. Miller v. Watson, 467 So. 2d 672, 1985 Miss. LEXIS 2022 (Miss. 1985).

Action by illegitimate to be adjudicated son of deceased and to be allowed to share in estate which is brought within 3 years of July 1, 1981, date of enactment of amendment of § 91-1-15 is timely, notwithstanding fact that suit is brought 14 years after death of deceased, so long as death occurred prior to July 1, 1981. Berry v. Berry, 463 So. 2d 1031, 1984 Miss. LEXIS 1830 (Miss. 1984), cert. denied, 474 U.S. 828, 106 S. Ct. 90, 88 L. Ed. 2d 73, 1985 U.S. LEXIS 3348 (U.S. 1985).

The Supreme Court would not answer a certified question concerning the rights of illegitimate children of deceased fathers to certain social security benefits where it was asked to assume that § 91-1-15 was unconstitutional, and the constitutionality of that statute had not been squarely presented to, and litigated by, a court of competent jurisdiction. Jones ex rel. Jones v. Harris, 460 So. 2d 120, 1984 Miss. LEXIS 2002 (Miss. 1984).

An illegitimate daughter's petition to determine heirship was not a paternity action, and therefore was not barred by § 15-1-49 when she failed to file suit within six years of reaching majority, since under § 91-1-15, the determination of heirship could not be made prior to the decedent's death, and, until then, her cause of action did not accrue. Estate of Kidd v. Kidd, 435 So. 2d 632, 1983 Miss. LEXIS 2600 (Miss. 1983).

The phrase, "children of illegitimates", as used in this section [Code 1942, § 474] applies only to legitimate children of illegitimates. Akers v. Estate of Johnson, 236 So. 2d 437, 1970 Miss. LEXIS 1493 (Miss. 1970).

Illegitimate children inherit mother's share in the estate of her intestate brother, who left no wife or children surviving him. McDaniel v. McDaniel, 123 Miss. 401, 85 So. 113, 1920 Miss. LEXIS 35 (Miss. 1920).

Illegitimate son of sister of whole-blood took intestate's personalty to exclusion of children of sister of half-blood. Davidson v. Brownlee, 114 Miss. 398, 75 So. 140, 1917 Miss. LEXIS 45 (Miss. 1917).

Word "children" in constitution and bylaws of benefit association held not to exclude illegitimate child of female member. Shelton v. Minnis, 107 Miss. 133, 65 So. 114, 1914 Miss. LEXIS 60 (Miss. 1914).

Under former provisions, this chapter made an innovation on the common law in favor of illegitimates in regard to inheritance, but it nowhere made rights in action for torts, transmissible by descent, and at common law they were not so transmissible. Illinois C. R. Co. v. Johnson, 77 Miss. 727, 28 So. 753, 1900 Miss. LEXIS 59 (Miss. 1900).

4. Inheritance through illegitimates.

Doctrine of unclean hands was inapplicable because a mother's failure to give a father notice of a wrongful death acton did not amount to a willful act that transgressed equitable standards of conduct; the mother and the father were never married, the father consistently denied paternity of the deceased child, and the father failed to meet the statutory requirements to constitute a wrongful death beneficiary of the child. Perkins v. Nelson (In re Estate of Nelson), 266 So. 3d 1008, 2018 Miss. App. LEXIS 350 (Miss. Ct. App. 2018).

Father and his children failed to provide the Attorney General with notice of their constitutional challenge at the trial level because they first notified the Attorney General of their challenge to the constitutionality of the statute in their notice of appeal; thus, the father and children did not comply with the requirements of Miss. R. Civ. P. 24(d), and their challenge to the constitutionality of the wrongful death statute's incorporation of § 91-1-15(3) was procedurally barred. Perkins v. Nelson (In re Estate of Nelson), 266 So. 3d 1008, 2018 Miss. App. LEXIS 350 (Miss. Ct. App. 2018).

Deceased child's biological father was not entitled to inherit from his daughter's estate and to receive proceeds from a wrongful death suit because to permit the father to inherit from the decedent's estate would result in a financial windfall to the father; the evidence supports a conclusion that the father refused or neglected to support the child under Miss. Code Ann. § 91-1-15(3) where the father failed to provide any financial support to the child's mother before he went to prison the month before the child was born and instead permitted the mother to support him and where, although the father received money from friends and relatives while he was in prison, he failed to direct any of those funds to the care and support of his child. Estate of McCoy v. McCoy, 988 So. 2d 929, 2008 Miss. App. LEXIS 407 (Miss. Ct. App. 2008).

Parent could inherit from an illegitimate child under Miss. Code Ann. § 91-1-15 if he had openly treated the child as his and had not refused or neglected to support the child; however, the father made no effort to be a parent to the child, suffered no loss as the result of the demise of the child, and any part of the settlement received by the father and his kindred could only have been termed a windfall and unjust enrichment. Williams v. Farmer, 876 So. 2d 300, 2004 Miss. LEXIS 760 (Miss. 2004).

Court erred in finding that an administratrix had unclean hands in the administratrix's action to disinherit the deceased's biological father; before filing the petition, the administratrix had not stated in any prior pleading or action that the father had openly treated and supported the deceased as a child, nor had the administratrix waived the provisions of Miss. Code Ann. § 91-1-15(3)(d), which would have entitled the father to inherit from the deceased. In re Estate of Richardson v. Cornes, 905 So. 2d 620, 2004 Miss. App. LEXIS 448 (Miss. Ct. App. 2004).

In the absence of a clear, unequivocal, and unambiguous waiver of the requirements of Miss. Code Ann. § 91-1-15(3) by the maternal heirs of an illegitimate child, the natural father, who has not fulfilled obligations to acknowledge and support the child during the child's lifetime, is prevented from enjoying the benefits of inheritance. In re Estate of Richardson v. Cornes, 905 So. 2d 620, 2004 Miss. App. LEXIS 448 (Miss. Ct. App. 2004).

The father of an illegitimate child failed to establish his right to inherit from the child where he never met the child, failed to support the child, and failed to acknowledge the child as his own during the child's lifetime, notwithstanding that he did not receive the results of a blood test that established his paternity until just four days before the child's death. In re Estate of Patterson v. Patterson, 798 So. 2d 347, 2001 Miss. LEXIS 11 (Miss. 2001).

In an action by the kindred of the natural father of an illegitimate daughter to inherit from her estate, the claimants had the burden of proving by a preponderance of the evidence that the father openly recognized the illegitimate daughter as his child and that he did not refuse or neglect to support her when she was a child. Woodall v. Johnson, 552 So. 2d 1065 (Miss. 1989).

Claim by natural father of illegitimate child, that he, the father, was entitled to the proceeds of a proposed settlement for the wrongful death of that child, was properly denied where the father had not supported the child and was therefore not the lawful heir. Alexander v. Alexander, 465 So. 2d 340, 1985 Miss. LEXIS 1967 (Miss. 1985).

Daughter of an illegitimate may sue to determine her heirship descending from the father of her illegitimate mother. In re Estate of Kimble, 447 So. 2d 1278, 1984 Miss. LEXIS 1661 (Miss. 1984).

An action brought by the daughter of decedent's illegitimate daughter to establish her heirship was timely filed, where it was brought within the three year period prescribed by § 91-1-15(3)(d)(ii) paragraph 2, which regulates the limitation period for claims accruing to any legitimate child as the result of the death of an intestate prior to July 1, 1981, and where the decedent died prior to that date. In re Estate of Kimble, 447 So. 2d 1278, 1984 Miss. LEXIS 1661 (Miss. 1984).

Where it appeared that the father of an intestate and the mothers of several groups of claimants to intestate's property were all illegitimate children of the same mother, but that the mother of one group had the same father as the intestate's father, the latter group was entitled to take the property to exclusion of the other groups of claimants, since, although children of an illegitimate, they were kindred of the whole-blood to the intestate, while the other groups, also being children of illegitimates, were kindred of the half-blood by reason of their mothers having a different father. Taylor v. Jackson, 194 Miss. 441, 12 So. 2d 144, 1943 Miss. LEXIS 62 (Miss. 1943).

The legitimate children of an illegitimate father were entitled to inherit from the half-sister of their father, who died intestate, regardless of whether such half-sister was legitimate or illegitimate, where the intestate had no kindred of the whole-blood. Malone v. Pope, 189 Miss. 46, 196 So. 319, 1940 Miss. LEXIS 109 (Miss. 1940).

RESEARCH REFERENCES

ALR.

Inheritance from illegitimate. 48 A.L.R.2d 759.

Inheritance by illegitimate from mother's legitimate children. 60 A.L.R.2d 1182.

Inheritance by illegitimate from or through mother's ancestors or collateral kindred. 97 A.L.R.2d 1101.

Inheritance by illegitimate from mother's other illegitimate children. 7 A.L.R.3d 677.

Eligibility of illegitimate child to receive family allowance out of estate of his deceased father. 12 A.L.R.3d 1140.

Discrimination on basis of illegitimacy as denial of constitutional rights. 38 A.L.R.3d 613.

Legitimation by marriage to natural father of child born during mother's marriage to another. 80 A.L.R.3d 219.

Right of illegitimate grandchildren to take under testamentary gift to "grandchildren". 17 A.L.R.4th 1292.

Am. Jur.

41 Am. Jur. 2d, Illegitimate Children § 112 et seq.

CJS.

10 C.J.S., Bastards §§ 24-28, 24-30.

Law Reviews.

1981 Mississippi Supreme Court Review: Miscellaneous. 52 Miss. L. J. 481, June, 1982.

1982 Mississippi Supreme Court Review: Civil Procedure: Judicial Decisions. 53 Miss L. J. 130, March, 1983.

1982 Mississippi Supreme Court Review: Miscellaneous. 53 Miss. L. J. 179, March, 1983.

Paternal inheritance rights of illegitimates under Mississippi law: greater than equal protection? 53 Miss. L. J. 303, June, 1983.

1989 Mississippi Supreme Court Review: Wills (Rights of Illegitimates and Heirship). 59 Miss. L. J. 909, Winter, 1989.

§ 91-1-17. Advancement to be brought into hotchpot.

When any of the children of a person dying intestate, or their descendants, shall have received from such intestate, in his lifetime, any real or personal estate by way of advancement, and shall choose to come into the partition and distribution of the estate with the other parceners and distributees, such advancement, both of real and personal estate, shall be brought into hotchpot with the whole estate, real and personal, descended. Such party bringing such advancement into hotchpot shall thereupon be entitled to his or her proper portion of the whole estate descended, both real and personal; but such advancement shall be valued according to its value at the time said distributee received it.

HISTORY: Codes, Hutchinson's 1848, ch. 44, art. 2 (51); 1857, ch. 60, art. 113; 1871, § 1953; 1880, § 1276; 1892, § 1550; 1906, § 1656; Hemingway's 1917, § 1388; 1930, § 1409; 1942, § 475.

Cross References — Sale of personal estate for division, see § 91-7-301 et seq.

Proceedings pertaining to trusts and estates, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

Inasmuch as this section [Code 1942 § 475] is applicable only in the case of a person dying intestate, where decedent died testate, conveyances of property to two children did not constitute an advancement. Mills v. Mills, 279 So. 2d 917, 1973 Miss. LEXIS 1495 (Miss. 1973).

Book accounts kept by father against children during minority, without anything to show intention to charge them as advancements, will not be held advancements. Greene v. Greene, 145 Miss. 87, 110 So. 218, 1926 Miss. LEXIS 2 (Miss. 1926).

To constitute "advancement," donor must irrevocably part with title, which must be vested in donee, in lifetime of donor; where no estate which can be alienated is given donee, no advancement is made. Greene v. Greene, 145 Miss. 87, 110 So. 218, 1926 Miss. LEXIS 2 (Miss. 1926).

Land given by father to son as advancement should be valued for partition as of date of gift. Greene v. Greene, 145 Miss. 87, 110 So. 218, 1926 Miss. LEXIS 2 (Miss. 1926).

Mere gift of money to a son is not presumed an advancement, but money advanced to son to purchase real estate is presumed an advancement. Kemp v. Turman, 104 Miss. 501, 61 So. 548, 1913 Miss. LEXIS 56 (Miss. 1913).

The widow is not within the statute. Whitley v. Stephenson, 38 Miss. 113, 1859 Miss. LEXIS 100 (Miss. 1859).

The value of the property at the time of the advancement must govern in the distribution, and interest is not to be charged thereon. Jackson v. Jackson, 28 Miss. 674, 1855 Miss. LEXIS 10 (Miss. 1855).

The party bringing an advancement into hotchpot does not relinquish his interest in the particular property. The title to it was derived from the gift and cannot be affected by the distribution. Jackson v. Jackson, 28 Miss. 674, 1855 Miss. LEXIS 10 (Miss. 1855).

A child who does not claim anything by inheritance cannot be compelled to bring the property received from the father in his lifetime into hotchpot. Phillips v. McLaughlin, 26 Miss. 592, 1853 Miss. LEXIS 142 (Miss. 1853).

The advancements must have been received from the intestate himself. Callender v. McCreary, 5 Miss. 356, 1840 Miss. LEXIS 24 (Miss. 1840).

RESEARCH REFERENCES

ALR.

Presumption and burden of proof with respect to advancement. 31 A.L.R.2d 1036.

Check as evidencing advancement. 74 A.L.R.5th 491.

Am. Jur.

1A Am. Jur. Legal Forms 2d, Advancements § 10:10 et seq. (particular agreements and provisions).

35 Am. Jur. Proof of Facts 2d 357, Decedent's Gift to Heir as Advancement.

CJS.

26B C.J.S., Descent and Distribution § 114 et seq.

§ 91-1-19. Descent of exempt property.

The property, real and personal, exempted by law from sale under execution or attachment shall, on the death of the husband or wife owning it, descend to the survivor of them and the children and grandchildren of the decedent, as tenants in common, grandchildren inheriting their deceased parent's share; and if there be no children or grandchildren of the decedent, to the surviving wife or husband; and if there be no such survivor, to the children and grandchildren of the deceased owner. Where the surviving husband or wife shall own a place of residence equal in value to the homestead of the decedent, and the deceased husband or wife have no surviving children or grandchildren of the last marriage but have children or grandchildren of a former marriage, the homestead of such decedent shall not descend to the surviving husband or wife, but shall descend to the surviving children and grandchildren of the decedent by such former marriage, as other property.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 17 (2); 1857, ch. 60, art. 172; 1871, § 1956; 1880, § 1277; 1892, § 1551; 1906, § 1657; Hemingway's 1917, § 1389; 1930, § 1410; 1942, § 476; Laws, 1900, ch. 89.

Cross References — Payment to estate as intestate property of actuarial equivalent of remaining payments on reduced retirement allowance annuity, see § 25-11-115.

Exempt property generally, see § 85-3-1 et seq. and § 89-1-29.

Homestead allotment, see § 85-3-29 et seq.

Appraiser's duty to set aside exempt property, see §§ 91-7-117, 91-7-135, 91-7-137.

Proceedings pertaining to trusts and estates, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

ANALYSIS

1. Construction and application in general.
2. Exempt property not part of estate to be administered.
3. Date for determining value of property.

1. Construction and application in general.

This statute [Code 1972, § 91-1-19] specifically controls the descent of exempt property, and those entitled thereto under the statute inherit the exempt property in fee simple free of decedent's debts; only when the decedent leaves no surviving spouse or children or grandchildren does the exempt property become liable for the decedent's debts under Code 1972, § 91-1-21. Weaver v. Blackburn, 294 So. 2d 786, 1974 Miss. LEXIS 1828 (Miss. 1974).

Undivided interest in homestead descended to decedent's wife and children. Jones v. Jones, 249 Miss. 322, 161 So. 2d 640, 1964 Miss. LEXIS 393 (Miss. 1964).

A widow, children and grandchildren are tenants in common subject to the right by the widow to undisturbed possession of the exempt homestead. Bonds v. Bonds, 226 Miss. 348, 84 So. 2d 397, 1956 Miss. LEXIS 406 (Miss. 1956).

The fact that a widow was given a right under the statute to have the undisturbed possession of the exempt homestead following the death of the husband does not have the effect of destroying the tenancy in common, which arose in the property upon the death of the husband, merely because of the fact that the right of possession of the other heirs is postponed pending the widowhood of the wife. Bonds v. Bonds, 226 Miss. 348, 84 So. 2d 397, 1956 Miss. LEXIS 406 (Miss. 1956).

Son, one of ten adult heirs of deceased father, who paid to his mother $400 which was owing to father on purchase of homestead, there being no administrator and no agent appointed by heirs authorized to receive payment, is not entitled to be credited with $250 paid to mother as allowance to widow, as widow had only a one-tenth interest in this $400, in suit in which heirs claimed balance due them on purchase price of land. Davis v. Davis, 205 Miss. 794, 39 So. 2d 486, 1949 Miss. LEXIS 465 (Miss. 1949).

This section [Code 1942, § 476] lays down general rule that upon death of a husband or wife, his or her exempt property shall descend to the survivor and to the children of the owner as tenants in common, but the section concludes with an exception thereto. Reed v. Reed, 197 Miss. 261, 19 So. 2d 745, 1944 Miss. LEXIS 294 (Miss. 1944).

A bill to establish widow's right to possession and occupancy of the homestead of her deceased husband need not negative the exception contained in this section [Code 1942, § 476]. Reed v. Reed, 197 Miss. 261, 19 So. 2d 745, 1944 Miss. LEXIS 294 (Miss. 1944).

The status of cotenancy is recognized in statutory provisions that a decedent's widow shall share in the homestead property as a tenant in common with the children, and that there shall be no partition during her widowhood, or while she continues to occupy or use it, but the usual rights thereunder are made subordinate to the widow's right of use and occupancy during her life. Bohn v. Bohn, 193 Miss. 122, 5 So. 2d 429, 1942 Miss. LEXIS 77 (Miss. 1942).

In line with the purpose of and under the statutory provisions that a decedent's widow shall share in the homestead property as a tenant in common with the children, and that there shall be no partition during her widowhood, or while she continues to occupy or use it, the immunity from partition, being personal to the widow, is not extended to her grandniece. Bohn v. Bohn, 193 Miss. 122, 5 So. 2d 429, 1942 Miss. LEXIS 77 (Miss. 1942).

The right of the widow has the attributes and incidents of a life estate, and the other heirs are vested with a future estate which takes effect in possession at the termination of the preceding estate or interest. Bohn v. Bohn, 193 Miss. 122, 5 So. 2d 429, 1942 Miss. LEXIS 77 (Miss. 1942).

Where deceased share tenant left nothing except exempt property, administration was unnecessary; hence widow and children having unsuccessfully demanded tenant's share from landlord could recover in replevin. Williams v. Sykes, 170 Miss. 88, 154 So. 267, 154 So. 727, 1934 Miss. LEXIS 100 (Miss. 1934).

Complainant in partition suit, claiming interest as tenant in common through ancestor, was not required to prove that ancestor died intestate. Smith v. Stanley, 159 Miss. 720, 132 So. 452, 1931 Miss. LEXIS 68 (Miss. 1931).

Exempt property, real or personal, left by a deceased husband descends to his widow and children as tenants in common, the grandchildren taking per stirpes the share of deceased children, but the widow has the right to occupy and use the same free from liability for rent or hire and from partition during her widowhood. Martin v. Martin, 84 Miss. 553, 36 So. 523, 1904 Miss. LEXIS 56 (Miss. 1904).

If the widow renounces the will disposing of exempt property, she is only entitled to share in the estate generally and is not entitled to the specific exempt property so disposed of. Nash v. Young, 31 Miss. 134, 1856 Miss. LEXIS 48 (Miss. 1856).

In case the exempt property be disposed of by will, the statute does not apply. Turner v. Turner, 30 Miss. 428, 1855 Miss. LEXIS 114 (Miss. 1855); Norris v. Callahan, 59 Miss. 140, 1881 Miss. LEXIS 87 (Miss. 1881); Osburn v. Sims, 62 Miss. 429, 1884 Miss. LEXIS 98 (Miss. 1884).

2. Exempt property not part of estate to be administered.

Executrix did not waive the homestead exemption by entering into a contractual relationship with the Mississippi Division of Medicaid on behalf of a decedent because the record did not support the idea that the decedent had any knowledge of the benefits a homestead exemption provided, nor that he intentionally waived his right to the benefit of that exemption since the contract did not provide any information pertaining to, or even mention, the significance of any exemption; there was no evidence of the decedent's intent to waive any of his rights because by entering into the contract, the decedent merely acknowledged Medicaid as a creditor of his estate, which estate had no property against which Medicaid could recover. State v. Stinson (In re Estate of Darby), 68 So. 3d 702, 2011 Miss. App. LEXIS 96 (Miss. Ct. App.), cert. denied, 69 So. 3d 767, 2011 Miss. LEXIS 419 (Miss. 2011).

Trial court did not err in granting an executrix summary judgment and in determining that the claim of the Mississippi Division of Medicaid was not valid against a decedent's property because the decedent predeceased his children and a grandchild to whom he devised all of his property, and pursuant to the unambiguous language of Miss. Code Ann. §§ 85-3-21, 91-1-19, and 91-1-21, coupled with case law, the homestead, with its exemption, passed from the decedent to his children and grandchildren free of his debts; thus, Medicaid was not entitled to pursue a claim against the exempted property as it was not a part of the estate. State v. Stinson (In re Estate of Darby), 68 So. 3d 702, 2011 Miss. App. LEXIS 96 (Miss. Ct. App.), cert. denied, 69 So. 3d 767, 2011 Miss. LEXIS 419 (Miss. 2011).

This is so whether the estate be solvent or insolvent. Mason v. O'Brien, 42 Miss. 420, 1869 Miss. LEXIS 8 (Miss. 1869); De Baum v. Hulett Undertaking Co., 169 Miss. 488, 153 So. 513, 1934 Miss. LEXIS 66 (Miss. 1934).

Under Code 1892, § 1551 [Code 1942, § 476], $1,000 of life insurance, being exempt, inures to the heirs and forms no part of the estate to be administered. Equitable Life Assurance Soc. v. Hartfield, 87 Miss. 548, 40 So. 21, 1905 Miss. LEXIS 175 (Miss. 1905).

The exempt personal property is no part of the estate to be administered, but descends directly under the statute. Whitley v. Stephenson, 38 Miss. 113, 1859 Miss. LEXIS 100 (Miss. 1859); Holliday v. Holland, 41 Miss. 528, 1867 Miss. LEXIS 25 (Miss. 1867); Wally v. Wally, 41 Miss. 657, 1868 Miss. LEXIS 16 (Miss. 1868); De Baum v. Hulett Undertaking Co., 169 Miss. 488, 153 So. 513, 1934 Miss. LEXIS 66 (Miss. 1934).

3. Date for determining value of property.

If at the death of the owner of a homestead it does not exceed the full limit of value allowed, a subsequent appreciation in value, no matter how great, does not give creditors of the decedent any right to subject to their claims the excess over the full amount allowed. Moody v. Moody, 86 Miss. 323, 38 So. 322, 1905 Miss. LEXIS 34 (Miss. 1905).

The value of the property claimed as a homestead must be as of the time of decedent's death. Parisot v. Tucker, 65 Miss. 439, 4 So. 113, 1888 Miss. LEXIS 14 (Miss. 1888).

RESEARCH REFERENCES

ALR.

Rights of surviving spouse and children in proceeds of sale of homestead in decedent's estate. 6 A.L.R.2d 515.

Effect of divorce, separation, desertion, unfaithfulness, and the like, upon right to administer upon estate of spouse. 34 A.L.R.2d 876.

Separation agreement as barring rights of surviving spouse in other's estate. 34 A.L.R.2d 1020.

Am. Jur.

40 Am. Jur. 2d, Homestead §§ 142, 143, 151 et seq.

CJS.

40 C.J.S., Homestead § 95 et seq.

§ 91-1-21. Exempt property liable for debt of decedent.

If there shall not be either a surviving wife or husband or children or grandchildren of the decedent, the exempt property shall be liable for the debts of the decedent and be disposed of in all respects as other property of such decedent.

HISTORY: Codes, 1871, § 1956; 1880, § 1277; 1892, § 1552; 1906, § 1658; Hemingway's 1917, § 1390; 1930, § 1411; 1942, § 477; Laws, 1900, ch. 89.

Cross References — Exempt property generally, see §§ 85-3-1 et seq., 89-1-29.
What are considered assets of estate, see § 91-7-91.
Sale of property for payment of debts, see § 91-7-183 et seq.
Proceedings pertaining to trusts and estates, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

Executrix did not waive the homestead exemption by entering into a contractual relationship with the Mississippi Division of Medicaid on behalf of a decedent because the record did not support the idea that the decedent had any knowledge of the benefits a homestead exemption provided, nor that he intentionally waived his right to the benefit of that exemption since the contract did not provide any information pertaining to, or even mention, the significance of any exemption; there was no evidence of the decedent's intent to waive any of his rights because by entering into the contract, the decedent merely acknowledged Medicaid as a creditor of his estate, which estate had no property against which Medicaid could recover. State v. Stinson (In re Estate of Darby), 68 So. 3d 702, 2011 Miss. App. LEXIS 96 (Miss. Ct. App.), cert. denied, 69 So. 3d 767, 2011 Miss. LEXIS 419 (Miss. 2011).

Trial court did not err in granting an executrix summary judgment and in determining that the claim of the Mississippi Division of Medicaid was not valid against a decedent's property because the decedent predeceased his children and a grandchild to whom he devised all of his property, and pursuant to the unambiguous language of Miss. Code Ann. §§ 85-3-21, 91-1-19, and 91-1-21, coupled with case law, the homestead, with its exemption, passed from the decedent to his children and grandchildren free of his debts; thus, Medicaid was not entitled to pursue a claim against the exempted property as it was not a part of the estate. State v. Stinson (In re Estate of Darby), 68 So. 3d 702, 2011 Miss. App. LEXIS 96 (Miss. Ct. App.), cert. denied, 69 So. 3d 767, 2011 Miss. LEXIS 419 (Miss. 2011).

Where a decedent died leaving no surviving spouse, child or grandchild, the homestead exemption expired with her death and was not valid as against unpaid claims against her estate, even though the decedent left a will devising her previously exempt homestead property to her ex-husband; the specific language of § 91-1-21 does not continue a decedent's homestead exemption for anyone other than a surviving spouse, children or grandchildren, and consequently there was no exemptionist who could defeat the claim against the estate's homestead property. Memorial Hosp. v. Franzke (In re Estate of Franzke), 634 So. 2d 117, 1994 Miss. LEXIS 132 (Miss. 1994).

The general rule imposing liability for the debts of the decedent upon his exempt property in the absence of wife or children, is laid down in this section [Code 1942, § 477], but there are exceptions of limitations placed thereon in cases where the proceeds of life insurance policy, in one case, are made payable to beneficiary, and in the other, made to inure to the heirs of legatees of the decedent. Coates v. Worthy, 72 Miss. 575, 17 So. 606, 1895 Miss. LEXIS 24 (Miss. 1895).

RESEARCH REFERENCES

Am. Jur.

23 Am. Jur. 2d, Descent and Distribution § 134 et seq.

CJS.

26B C.J.S., Descent and Distribution § 134 et seq.

§ 91-1-23. Exempt property not to be partitioned in certain cases.

Where a decedent leaves a widow to whom, with others, his exempt property, real and personal, descends, the same shall not be subject to partition or sale for partition during her widowhood as long as it is occupied or used by the widow, unless she consent. Likewise, where a decedent leaves a widower to whom, with others, her exempt property, real and personal, descends, the same shall not be subject to partition or sale for partition during the period of his being a widower as long as it is occupied or used by the widower, unless he consent.

HISTORY: Codes, 1892, § 1553; 1906, § 1659; Hemingway's 1917, § 1391; 1930, § 1412; 1942, § 478; Laws, 1950, ch. 346.

Cross References — Partition of property generally, see § 11-21-1 et seq.
Proceedings pertaining to trusts and estates, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. To what property applicable.
3. How title acquired immaterial.
4. —Renunciation of will.
5. Personal nature of right.
6. Effect on others' interests.
7. "Partition."
8. Obligation to give accounting.
9. Remarriage of widow/widower.
10. Use without occupancy.
11. Value of property.
12. Tax delinquency.
13. Insurance.
14. Practice and procedure.

1. In general.

Judgment creditor of husband and wife who together owned property as tenants by the entirety could levy execution and sell that portion of homestead property which exceeded value of statutory homestead exemption which had vested in wife following husband's death; this section was not applicable to debt for which surviving spouse was jointly and severally liable. In re Osborne, 120 B.R. 64, 1990 Bankr. LEXIS 2184 (Bankr. N.D. Miss. 1990).

A surviving spouse's statutory right to occupy a homestead prevails where, by will, the owner devises it to another without share to the spouse; the surviving spouse need not renounce the will of the deceased owner in order to benefit from the statutory homestead right. Rush v. Rush, 360 So. 2d 1240, 1978 Miss. LEXIS 2341 (Miss. 1978).

This section would not apply to defeat the former wife's partition action of a home to which she had been given exclusive right of possession under the decree of divorce, where neither the former wife nor former husband were deceased. Blackmon v. Blackmon, 350 So. 2d 44, 1977 Miss. LEXIS 2207 (Miss. 1977).

Exempt homestead which descended to decedent's wife and children was not subject to partition during the widowhood of the surviving wife, provided she remained a widow and qualified under the exemption statute. Jones v. Jones, 249 Miss. 322, 161 So. 2d 640, 1964 Miss. LEXIS 393 (Miss. 1964).

A husband in possession of realty which he and his wife held as cotenants, may, so long as he remains a widower, resist partition sought by one to whom the wife devised her interest. Biggs v. Roberts, 237 Miss. 406, 115 So. 2d 151, 1959 Miss. LEXIS 485 (Miss. 1959).

Where a widow of a landowner, who had died intestate leaving also a son and daughter, neither waived nor attempted to dispose of her homestead rights by a deed conveying her one third interest to her son reserving to herself a life estate in all the lands, a grantee of one half interest of the tract of land from the son, to whom the daughter had also conveyed her one third interest therein, was not entitled to have the exempt property partitioned over the widow's objection. Gresham v. Clark, 231 Miss. 206, 95 So. 2d 234, 1957 Miss. LEXIS 506 (Miss. 1957).

The property of an intestate was not subject to partition or sale for partition during the widowhood, as long as it was occupied by her, unless she consented. La Blanc v. Busby, 223 Miss. 415, 78 So. 2d 456, 1955 Miss. LEXIS 397 (Miss. 1955).

Under provision widow has the right to retain the homestead as it was during her husband's lifetime, and this is true even though he also left children surviving. Bohn v. Bohn, 193 Miss. 122, 5 So. 2d 429, 1942 Miss. LEXIS 77 (Miss. 1942).

Children cannot have partition of exempt property occupied or used by widow. Stevens v. Wilbourn, 88 Miss. 514, 41 So. 66, 1906 Miss. LEXIS 167 (Miss. 1906).

Exempt property, real or personal, left by a deceased husband descends to his widow and children as tenants in common, the grandchildren taking per stirpes the share of the deceased children, but the widow has the right to occupy and use the same freed from liability for rent or hire and from partition during her widowhood. Martin v. Martin, 84 Miss. 553, 36 So. 523, 1904 Miss. LEXIS 56 (Miss. 1904).

2. To what property applicable.

Where property is subject to partition during the lives of cotenants-husbands, the right to partition is not enjoined by the deaths of the cotenants-husbands and the survival of their wives; however, the widows should retain their houses as improvements on the land, if possible, or, in the alternative, if it is not feasible to partition the land to allow the widows to receive their respective houses as improvements, then an accounting should be had as to such improvements. Carter v. Brewton, 396 So. 2d 617, 1981 Miss. LEXIS 2055 (Miss. 1981).

Where the husband of the defendant in a partition action had never established the property in question as his homestead, his widow had no homestead interest in the land which would prevent its partition. Mathis v. Quick, 271 So. 2d 924, 1973 Miss. LEXIS 1527 (Miss. 1973).

This section [Code 1942, § 478] applies only to the property of the decedent owned at the time of his death, and does not prevent partition of the property of a deceased cotenant. Solomon v. Solomon, 187 Miss. 22, 192 So. 10, 1939 Miss. LEXIS 86 (Miss. 1939).

3. How title acquired immaterial.

A widow or widower is entitled to full use and occupancy of homestead property during widowhood whether he or she took that interest by deed, devise, or descent. Stockett v. Stockett, 337 So. 2d 1237, 1976 Miss. LEXIS 1603 (Miss. 1976).

It is not necessary to the operation of this section [Code 1942, § 478] that title should have been acquired by inheritance. Biggs v. Roberts, 237 Miss. 406, 115 So. 2d 151, 1959 Miss. LEXIS 485 (Miss. 1959).

Widow, redeeming her interest from tax sale, had right against the other tenants to occupy property as homestead while widow, regardless of source from which cotenant's title was derived. Lackey v. Harrington, 162 Miss. 512, 139 So. 313, 1932 Miss. LEXIS 123 (Miss. 1932).

4. —Renunciation of will.

Although proper contracts not to renounce a will are enforceable even though Code 1972 § 91-5-25 provides that a husband or wife may renounce the will of another, the wife's agreement not to renounce her will constituted an unconscionable contract so as to permit the wife's renunciation of her husband's will, notwithstanding her prior agreement not to renounce, where the wife was taken by her husband directly from her job to the office of the husband's attorney and persuaded to assign the contract without prior knowledge of its existence or the opportunity to read the entire contract, and where the provision in the will, giving the wife a life estate in the parties' homestead as long as she continued to live on the property, was minimal consideration when viewed against her rights under the laws of descent and distribution including her statutory right to a life estate in the homestead under Code 1972 § 91-1-23 irrespective of her living on the property. In re Will of Johnson, 351 So. 2d 1339, 1977 Miss. LEXIS 1950 (Miss. 1977).

Upon a widow's renunciation of a testator's will devising to her a life estate in his home with remainder to a daughter, the widow became entitled to a one-third interest to the property in fee, and the daughter to the other two-thirds interest therein, subject to the right of the widow to occupy and use it during her widowhood. Milton v. Milton, 193 Miss. 563, 10 So. 2d 175, 1942 Miss. LEXIS 131 (Miss. 1942).

Widow with one child, upon renouncing, took undivided interest in the homestead, which is not subject to partition during her widowhood as long as occupied by her, without her consent. Williams v. Williams, 111 Miss. 129, 71 So. 300, 1916 Miss. LEXIS 253 (Miss. 1916).

5. Personal nature of right.

In line with the purpose of these provisions, the immunity from partition, being personal to the widow, is not extended to her grandniece. Bohn v. Bohn, 193 Miss. 122, 5 So. 2d 429, 1942 Miss. LEXIS 77 (Miss. 1942).

The right here conferred upon the widow is purely a personal one which does not pass to a grantee of her interest in the property. Middleton v. Claughton, 77 Miss. 131, 24 So. 963, 1899 Miss. LEXIS 41 (Miss. 1899).

6. Effect on others' interests.

The fact that a widow was given a right under the statute to have the undisturbed possession of the exempt homestead following the death of the husband does not have the effect of destroying the tenancy in common, which arose in the property upon the death of the husband, merely because of the fact that the right of possession of the other heirs is postponed pending the widowhood of the wife. Bonds v. Bonds, 226 Miss. 348, 84 So. 2d 397, 1956 Miss. LEXIS 406 (Miss. 1956).

A widow, children and grandchildren are tenants in common subject to the right by the widow to undisturbed possession of the exempt homestead. Bonds v. Bonds, 226 Miss. 348, 84 So. 2d 397, 1956 Miss. LEXIS 406 (Miss. 1956).

The status of cotenancy is recognized by the statute, but the usual rights thereunder are made subordinate to the widow's right of use and occupancy during her life. Bohn v. Bohn, 193 Miss. 122, 5 So. 2d 429, 1942 Miss. LEXIS 77 (Miss. 1942).

Under these provisions a widow's right has the attributes and incidents of a life estate, and the other heirs are vested with a future estate which takes effect in possession at the termination of the preceding estate or interest. Bohn v. Bohn, 193 Miss. 122, 5 So. 2d 429, 1942 Miss. LEXIS 77 (Miss. 1942).

A widow takes a child's part in the fee with the right of undisturbed possession or use of the homestead during her lifetime, and her use thereof may not be divided with the children. Bohn v. Bohn, 193 Miss. 122, 5 So. 2d 429, 1942 Miss. LEXIS 77 (Miss. 1942).

7. "Partition."

The partition prohibited by this section [Code 1942, § 478] means an actual division of title with the right of possession thereunder, not a mere record identification of the several interests therein without an assertion by the coparceners of their respective rights. Bohn v. Bohn, 193 Miss. 122, 5 So. 2d 429, 1942 Miss. LEXIS 77 (Miss. 1942).

8. Obligation to give accounting.

The rights of the widow are absolute, and she cannot be called upon to account for the use and occupancy, nor forced to purchase the rights of her cotenants. Bohn v. Bohn, 193 Miss. 122, 5 So. 2d 429, 1942 Miss. LEXIS 77 (Miss. 1942).

Children cannot have accounting, by widow, for her use of exempt property occupied or used by her. Stevens v. Wilbourn, 88 Miss. 514, 41 So. 66, 1906 Miss. LEXIS 167 (Miss. 1906).

9. Remarriage of widow/widower.

Upon remarriage of a widow, her rights under § 91-1-23, which prevents partition of homestead property, are terminated and the entire property becomes subject to partition by any and all of the other joint owners. Cheeks v. Herrington, 523 So. 2d 1033, 1988 Miss. LEXIS 211 (Miss. 1988).

Upon remarriage of a widow, her rights under the statute are terminated and the entire property becomes subject to partition by any and all of the other joint owners. Breland v. Bryant, 402 So. 2d 838, 1981 Miss. LEXIS 2145 (Miss. 1981).

This provision ceases to operate when the widow remarries. Jefcoat v. Powell, 235 Miss. 291, 108 So. 2d 868, 1959 Miss. LEXIS 429 (Miss. 1959).

10. Use without occupancy.

Where a decedent resided on one tract of land and used this tract with another as a farm unit which consisted of less than 160 acres, the widow was entitled to claim both parcels of land as a homestead although they were not contiguous. Horton v. Horton, 210 Miss. 116, 48 So. 2d 850, 1950 Miss. LEXIS 328 (Miss. 1950).

Neither the cases dealing only with urban property and those dealing with an urban tract and a rural tract as constituting together one homestead are applicable to a case where rural lands are involved. Horton v. Horton, 210 Miss. 116, 48 So. 2d 850, 1950 Miss. LEXIS 328 (Miss. 1950).

Widow, being entitled to use and occupancy of homestead, was entitled to rents thereof, and would so continue during her life or widowhood unless she elected or consented otherwise. Miers v. Miers, 160 Miss. 746, 133 So. 133, 1931 Miss. LEXIS 135 (Miss. 1931).

Court could not order sale of homestead of widow more than 60 years of age who has moved from premises, but was being supported in part from products. Wright v. Coleman, 137 Miss. 699, 102 So. 774, 1925 Miss. LEXIS 21 (Miss. 1925).

Exempt property of decedent descending to the widow with others is used by her so long as its income is used for her support, whether or not she resides on it. Tiser v. McCain, 113 Miss. 776, 74 So. 660, 1917 Miss. LEXIS 152 (Miss. 1917).

11. Value of property.

The question of value has no place in the consideration of the rights of a surviving widow to use and occupancy of the homestead, her rights being absolute so long as she remains a widow; the limitation on the value of the homestead that is exempt from creditors' demands, set by § 85-3-21, is not applicable. Stockett v. Stockett, 337 So. 2d 1237, 1976 Miss. LEXIS 1603 (Miss. 1976).

The value of the homestead is not material in passing on the rights of the surviving widow, since it was never the intention of the legislature that "160 acres of land should be reduced in quantity, save in one instance, and that is where the rights of the creditors were involved." Horton v. Horton, 210 Miss. 116, 48 So. 2d 850, 1950 Miss. LEXIS 328 (Miss. 1950).

Surviving widow entitled to occupy homestead of 160 acres irrespective of value, and heirs cannot have partition thereof. Dickerson v. Leslie, 94 Miss. 627, 47 So. 659, 1909 Miss. LEXIS 319 (Miss. 1909).

Under this section [Code 1942, § 478] a surviving widow is entitled to occupy the homestead as it existed in the lifetime of the husband without reference to its value, the limit of value placed by law on exempt homesteads being solely for the benefit and protection of creditors and not affecting the rights of a surviving widow to the use and occupation of the homestead against the other heirs of the deceased exemptionist. Moody v. Moody, 86 Miss. 323, 38 So. 322, 1905 Miss. LEXIS 34 (Miss. 1905).

12. Tax delinquency.

Where a widow of intestate occupied and used intestate's tax delinquent property, she could not permit the title to mature in the state and thereafter purchase the land for her own benefit at the expense of the children and any purchase she made of the tax title was made for the joint benefit of her and the intestate's children. La Blanc v. Busby, 223 Miss. 415, 78 So. 2d 456, 1955 Miss. LEXIS 397 (Miss. 1955).

Widow, redeeming her interest from tax sale, had right against the other tenants to occupy property as homestead while widow, regardless of source from which cotenant's title was derived. Lackey v. Harrington, 162 Miss. 512, 139 So. 313, 1932 Miss. LEXIS 123 (Miss. 1932).

13. Insurance.

Proceeds of policy procured by widow on homestead property occupied by herself and children as cotenants, each having an undivided one-fifth interest therein, did not inure to the benefit of the children as cotenants merely because of alleged fiduciary relationship existing between them as such, notwithstanding insurance was not limited to widow's separate interest. Collette v. Long, 179 Miss. 650, 176 So. 528, 1937 Miss. LEXIS 60 (Miss. 1937).

14. Practice and procedure.

A bill to establish widow's right to possession and occupancy of the homestead of her deceased husband need not negative the exception contained in Code 1942, § 476. Reed v. Reed, 197 Miss. 261, 19 So. 2d 745, 1944 Miss. LEXIS 294 (Miss. 1944).

Where the defendant, a decedent's adult son, and his family were in possession of the lower floor and part of the second floor of a two-story homestead property, the widow was properly granted a peremptory writ upon the issue of liability for rent for the portion of the homestead occupied by the son, and she was entitled to have him ejected. Bohn v. Bohn, 193 Miss. 122, 5 So. 2d 429, 1942 Miss. LEXIS 77 (Miss. 1942).

Decree in partition ordering and confirming sale of homestead, to which widow objected, should be vacated and bill dismissed. Talley v. Talley, 108 Miss. 84, 66 So. 328, 1914 Miss. LEXIS 172 (Miss. 1914).

RESEARCH REFERENCES

ALR.

Homestead Right of Cotenant as Affecting Partition. 83 A.L.R.6th 605.

§ 91-1-25. Person who has killed another not to inherit from him.

If any person wilfully cause or procure the death of another in any way, he shall not inherit the property, real or personal, of such other; but the same shall descend as if the person so causing or procuring the death had predeceased the person whose death he perpetrated.

HISTORY: Codes, 1892, § 1554; 1906, § 1660; Hemingway's 1917, § 1392; 1930, § 1413; 1942, § 479; Laws, 1992, ch. 311, § 1, eff from and after July 1, 1992.

Cross References — Prohibition against murderer taking under will, see § 91-5-33.
Proceedings pertaining to trusts and estates, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Construction.

1. In general.

Public Employees' Retirement System (PERS) Board of Trustees did not err in denying the claim a deceased PERS member's sister because the member's husband was entitled to lifetime spousal survivor benefits, notwithstanding the fact he was convicted of aggravated driving under the influence in connection with the member's death; the husband did not willfully cause the member's death under the slayer statutes, and he had been married to the member for over one year. Hicks v. Public Employees' Ret. Sys. of Miss., 282 So. 3d 1204, 2019 Miss. App. LEXIS 479 (Miss. Ct. App. 2019).

Mississippi Supreme Court has applied the same statutory principles of the "slayer statutes" where the property at issue was life insurance proceeds rather than an inheritance; the same principles would apply to Public Employees' Retirement System benefits for the strong public policy against allowing someone to profit from involvement in the death of another.

Hicks v. Public Employees' Ret. Sys. of Miss., 282 So. 3d 1204, 2019 Miss. App. LEXIS 479 (Miss. Ct. App. 2019).

Although the chancellor cited the wrong statutory section in finding that a father had no interest in his former wife's estate, the finding was substantively correct where there was no dispute that he had murdered his former wife, and as a result, he could have no interest in the estate under Miss. Code Ann. § 91-1-25 (Rev. 2013). Young v. O'Beirne, 147 So. 3d 877, 2014 Miss. App. LEXIS 311 (Miss. Ct. App. 2014).

In an action in which a beneficiary filed suit against an insurance company alleging claims of tortious breach of contract, breach of fiduciary duty and duty of good faith and fair dealing, negligence, gross negligence, and intentional infliction of emotional distress, the insurance company was granted summary judgment where: (1) the insured executed a voluntary statement to police that her husband had stabbed her with a knife and a month after the knife wound, the insured died in her bed; (2) no reasonable juror could conclude that the insurance company acted with malice, gross negligence, or reckless disregard in wanting to review the autopsy report; and (3) the delay in receiving the autopsy report was due in part to the beneficiary's failure to inform them of his address change. Washington v. Am. Heritage Life Ins. Co., 500 F. Supp. 2d 610, 2007 U.S. Dist. LEXIS 54120 (N.D. Miss. 2007).

Neither the Mississippi slayer's statute, Miss. Code Ann. § 91-1-25, or the Mississippi Uniform Simultaneous Death Act, Miss. Code Ann. §§ 91-3-1 through 91-13-15 acted to entitle the estate of a wife who was killed by her husband in a murder-suicide to a child's share of the husband's estate; husband's son by a previous marriage was the husband's sole heir-at-law. Miller v. Miller (In re Estate of Miller), 840 So. 2d 703, 2003 Miss. LEXIS 116 (Miss. 2003).

Evidence of a guilty plea to a charge of manslaughter is not sufficient, standing alone, to enable a fact finder to conclude that one is prohibited from inheriting under §§ 91-1-25 and 91-5-33. Hood v. VanDevender, 661 So. 2d 198, 1995 Miss. LEXIS 456 (Miss. 1995).

An action alleging that funds distributed to a decedent's son under a prior decree which adjudicated the intestate distribution of the decedent's estate, were "wrongfully inherited" pursuant to § 91-1-25 because the decedent's son willfully caused the decedent's death, was barred by § 91-1-31. Johnson v. Howell, 592 So. 2d 998, 1991 Miss. LEXIS 986 (Miss. 1991).

Mississippi Code § 91-1-25 represents a legislatively-created exception. Roberts v. Grisham, 493 So. 2d 940, 1986 Miss. LEXIS 2588 (Miss. 1986).

Decedent's husband was entitled to inherit an interest in land owned by his wife, even though he had entered into a consent decree in Michigan in which he relinquished his rights as heir of his wife, where the parties did not intend the Michigan decree to cover Mississippi lands; the testimony of husband that he shot his wife accidentally was properly admitted in evidence as an exception to the dead man's statute; insofar as the shooting was not wilful, the husband was not barred from inheriting by statute. Bianchi v. Scott, 363 So. 2d 289, 1978 Miss. LEXIS 2191 (Miss. 1978).

Equitable estoppel does not and cannot authorize the exercise of a personal right which terminates with the death of a spouse, and the fact that a husband shot and killed his wife, an act which would have precluded his inheriting her estate, is no justification for permitting the deceased wife's personal representatives to renounce the husband's will, an act which by law can only be invoked personally by a surviving spouse. Jenkins v. Borodofsky, 211 So. 2d 874, 1968 Miss. LEXIS 1288 (Miss. 1968).

The statute requiring commencement of action to recover land ten years after right to do so accrues, did not apply to a suit to cancel as cloud on title claim asserted by husband who pleaded guilty to manslaughter in the death of his wife. Henry v. Toney, 217 Miss. 716, 64 So. 2d 904, 1953 Miss. LEXIS 484 (Miss. 1953).

In a suit to cancel as cloud on title claim asserted by husband by virtue of inheritance from his deceased spouse, where it was finally adjudicated that the husband had pleaded guilty to manslaughter in the death of his wife, the suit was not one for penalty or forfeiture on a penal statute required to be brought within one year from the date of offense. Henry v. Toney, 217 Miss. 716, 64 So. 2d 904, 1953 Miss. LEXIS 484 (Miss. 1953).

Under this section [Code 1942, § 479] it is not requisite that the wilful killing shall amount to murder but it is enough that it was wilful and without justification in law. Henry v. Toney, 211 Miss. 93, 50 So. 2d 921, 1951 Miss. LEXIS 335 (Miss. 1951).

In a suit to cancel husband's claim to property of wife on the ground that he had feloniously slain his wife in Ohio and thereby forfeited his right to the property under this section [Code 1942, § 479], the fact that the husband pleaded guilty to manslaughter in Ohio does not admit a wilful killing but the husband should be allowed to introduce evidence to explain the circumstances of killing. Henry v. Toney, 211 Miss. 93, 50 So. 2d 921, 1951 Miss. LEXIS 335 (Miss. 1951).

Insurance beneficiary's acts, after an assault by her husband, in running to a neighbor's home, procuring a gun and returning to shoot her husband through the window, constituted a deliberate homicide without justification in law and precluded her, as the widow beneficiary, from claiming the proceeds of a life insurance policy. Gholson v. Smith, 210 Miss. 28, 48 So. 2d 603, 1950 Miss. LEXIS 316 (Miss. 1950).

2. Construction.

Slayer's statutes such as Miss. Code Ann. § 91-1-25 are strictly construed and narrow in purpose. Miller v. Miller (In re Estate of Miller), 840 So. 2d 703, 2003 Miss. LEXIS 116 (Miss. 2003).

The Mississippi slayer's statute, Miss. Code Ann. § 91-1-25, is a statute of exclusion, not inclusion and, when applicable, it acts to exclude a slayer from participation in the victim's estate but it does not act to include the victim in the slayer's estate due to the slayer's crime. Miller v. Miller (In re Estate of Miller), 840 So. 2d 703, 2003 Miss. LEXIS 116 (Miss. 2003).

RESEARCH REFERENCES

ALR.

Felonious killing of ancestor as affecting intestate succession. 39 A.L.R.2d 477.

Killing of insured by beneficiary as affecting life insurance or its proceeds. 27 A.L.R.3d 794.

Felonious killing of one cotenant or tenant by the entireties by the other as affecting latter's right in the property. 42 A.L.R.3d 1116.

Homicide as precluding taking under will or by intestacy. 25 A.L.R.4th 787.

Am. Jur.

23 Am. Jur. 2d, Descent and Distribution § 50 et seq.

§ 91-1-27. How title to property acquired by descent may be made.

In all cases in which persons have died, or may hereafter die, wholly or partially intestate, having property, real or personal, any heir at law of such deceased person, or any one interested in any of the property as to which he shall have died intestate, may petition the chancery court of the county in which said deceased had his mansion house or principal place or residence, or in which any part of his real estate may be situated, in case he was a nonresident, setting forth the fact that said person died wholly or partially intestate, possessed of real or personal property in the State of Mississippi, the names of the heirs at law or next of kin, and praying that the person named in said petition be recognized and decreed to be the heir at law of said deceased.

HISTORY: Codes, 1906, § 2790; Hemingway's 1917, § 310; 1930, § 359; 1942, § 1270; Laws, 1896, ch. 93.

Cross References — Applicability of this section to inheritances by and from illegitimates, see § 91-1-15.

Proceedings pertaining to trusts and estates, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

A claimant's timely filing, 3 days after the decedent's death, of a sworn Petition for Letters of Administration in which he alleged that he was the son and sole surviving heir of the deceased, sufficiently complied with the provisions of §§ 91-1-15, 91-1-27 and 91-1-29 and therefore his claim of heirship was not barred by the statute of limitations of § 91-1-15(3)(c). The fact that the claimant did not precisely state that he was the "illegitimate" or "born-out-of-wedlock" son, as opposed to simply declaring himself to be "the son," was a matter of semantics which made no difference; the indication that he was the sole surviving heir was sufficiently clear. Wash v. McIntosh, 566 So. 2d 1208 (Miss. 1990).

A party may combine a suit to determine heirship with a suit to contest a will. Dees v. Estate of Moore, 562 So. 2d 109, 1990 Miss. LEXIS 257 (Miss. 1990).

Section 91-1-15(3)(c), which requires that an action seeking adjudication of paternity be filed within 90 days after the first publication of notice to creditors, does not require that notice be given within the 90-day period. An out-of-wedlock child who brought a claim for heirship after her father's death complied with the filing requirement by petitioning to be appointed administratrix and seeking to be declared the sole and only heir-at-law, where other persons, who would inherit from the decedent, had actual knowledge of the claim of heirship as evidenced by their hiring of an attorney, and, before the estate was closed, were properly allowed by the court to file their claim. The summons by publication requirement of § 91-1-29 was met, and all parties were given their day in court. This procedure sufficiently complied with the notice requirements of § 91-1-27 and § 91-1-29, and the filing requirements of § 91-1-15(3)(c). Perkins v. Thompson, 551 So. 2d 204, 1989 Miss. LEXIS 360 (Miss. 1989).

When mother of decedent's alleged illegitimate child moved to intervene in case brought under Federal Employers Liability Act, it was incumbent on her to file petition in chancery court under § 91-1-27 and proceed under § 91-1-29, and intervention should have been denied because these statutes had not been followed; where parties agreed for circuit judge to hear issue of paternity on merits, case would not be reversed because wrong court decided issue; on merits, circuit judge was correct in dismissing proposed intervention because there was no clear and convincing evidence that decedent was child's natural father. Ivy v. Illinois C. G. R. Co., 510 So. 2d 520, 1987 Miss. LEXIS 2619 (Miss. 1987).

Provided paternity is established as required by §§ 91-1-27 and 91-1-29, "children" under Federal Employers Liability Act means illegitimate as well as legitimate children. Ivy v. Illinois C. G. R. Co., 510 So. 2d 520, 1987 Miss. LEXIS 2619 (Miss. 1987).

Illegitimate child has right to inherit in father's wrongful death claim, but such claim must be asserted and established by clear and convincing evidence under §§ 91-1-27 and 91-1-29. Ivy v. Illinois C. G. R. Co., 510 So. 2d 520, 1987 Miss. LEXIS 2619 (Miss. 1987).

Administrator who, in his petition for administration, represented that decedent's half-sister was the sole heir, even though he had actual knowledge that decedent had a living natural daughter, made a serious misrepresentation to the court, and, if the misrepresentation was determined to be a fraud on the court, the administrator would be removed. Campbell v. Gregory, 493 So. 2d 950 (Miss. 1986).

Although appointment of plaintiff as administrator of brother's estate may have violated Mississippi Code Annotated § 91-1-27, wrongful death action would not be dismissed where such appointment could be attacked in Chancery Court of De Soto County, Mississippi, which court appointed plaintiff as administrator. McGowan v. Riley, 628 F. Supp. 1087, 1985 U.S. Dist. LEXIS 15478 (N.D. Miss. 1985).

This section [Code 1942, § 1270] and Code 1942, § 1271 must be read as in pari materia. Shepherd v. Townsend, 249 Miss. 383, 163 So. 2d 746, 1964 Miss. LEXIS 401 (Miss. 1964).

The statute providing for the determination of the heirs of a decedent by a chancery court applies where the decedent has left a will bequeathing in part or entirely his estate to his nearest of kin according to the laws of descent and distribution. Shepherd v. Townsend, 249 Miss. 383, 163 So. 2d 746, 1964 Miss. LEXIS 401 (Miss. 1964).

Where there was no proceeding under this statute for the determination of heirs, one not a party to the administration of a decedent's estate may question its distribution even after expiration of the two years within which the statute permits the opening of an account. Shepherd v. Townsend, 249 Miss. 383, 163 So. 2d 746, 1964 Miss. LEXIS 401 (Miss. 1964).

Adopted children of decedent are not necessary parties to suit to adjudicate heirship, unless decree of adoption made adopted children lawful heirs of adopting parent. Whitman v. Whitman, 206 Miss. 838, 41 So. 2d 22, 1949 Miss. LEXIS 305 (Miss. 1949).

In a suit under this section [Code 1942, § 1270] to have themselves declared heirs, brother and sister of deceased, allegedly insane at time of marriage, could not after his death collaterally attack marriage which was merely voidable. White v. Williams, 159 Miss. 732, 132 So. 573, 1931 Miss. LEXIS 82 (Miss. 1931).

Defendant held to have complete remedy at law relative to who was heir, in death action against it by administrator. Craft v. Homochitto Lumber Co., 141 Miss. 156, 106 So. 440, 1925 Miss. LEXIS 226 (Miss. 1925).

RESEARCH REFERENCES

Am. Jur.

23 Am. Jur. 2d, Descent and Distribution § 25 et seq.

CJS.

26B C.J.S., Descent and Distribution § 10-12 et seq.

Law Reviews.

Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March, 1982.

§ 91-1-29. Heirs to be cited to appear.

All the heirs at law and next of kin of said deceased who are not made parties plaintiff to the action shall be cited to appear and answer the same. And in addition thereto a summons by publication shall be made addressed to "The heirs at law of ________, Deceased," and shall be published as other publications to absent or unknown defendants, and the cause shall be proceeded with as other causes in chancery, and upon satisfactory evidence as to death of said person and as to the fact that the parties to said suit are his sole heirs at law, the court shall enter a judgment that the persons so described be recognized as the heirs at law of such a decedent, and as such be placed in possession of his estate. And said judgment shall be evidence in all the courts of law and equity in this state that the persons therein named are the sole heirs at law of the person therein described as their ancestor.

HISTORY: Codes, 1906, § 2791; Hemingway's 1917, § 311; 1930, § 360; 1942, § 1271; Laws, 1991, ch. 573, § 127, eff from and after July 1, 1991.

Cross References — Publication of summons for unknown heirs, see § 13-3-25.
Applicability of this section to inheritances by and from illegitimates, see § 91-1-15.
Proceedings pertaining to trusts and estates, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

Decedent's administratrix's failure to notify decedent's illegitimate children of the administration of their father's estate resulted in tolling of the 90-day statute. In re Estate of Thomas, 883 So. 2d 1173, 2004 Miss. LEXIS 1269 (Miss. 2004).

When the individual asserting heirship claims to be an illegitimate child, the necessary parties include those blood relations of the decedent that would be the decedent's heirs at law should the illegitimate's claim of paternity fail; these persons are necessary parties even if they would be completely excluded from inheritance if the paternity claim is proven. Balsara v. Adams (In re Estate of Brewer), 755 So. 2d 1108, 1999 Miss. App. LEXIS 255 (Miss. Ct. App. 1999).

A claimant's timely filing, 3 days after the decedent's death, of a sworn Petition for Letters of Administration in which he alleged that he was the son and sole surviving heir of the deceased, sufficiently complied with the provisions of §§ 91-1-15, 91-1-27 and 91-1-29 and therefore his claim of heirship was not barred by the statute of limitations of § 91-1-15(3)(c). The fact that the claimant did not precisely state that he was the "illegitimate" or "born-out-of-wedlock" son, as opposed to simply declaring himself to be "the son," was a matter of semantics which made no difference; the indication that he was the sole surviving heir was sufficiently clear. Wash v. McIntosh, 566 So. 2d 1208 (Miss. 1990).

A party may combine a suit to determine heirship with a suit to contest a will. Dees v. Estate of Moore, 562 So. 2d 109, 1990 Miss. LEXIS 257 (Miss. 1990).

Section 91-1-15(3)(c), which requires that an action seeking adjudication of paternity be filed within 90 days after the first publication of notice to creditors, does not require that notice be given within the 90-day period. An out-of-wedlock child who brought a claim for heirship after her father's death complied with the filing requirement by petitioning to be appointed administratrix and seeking to be declared the sole and only heir-at-law, where other persons, who would inherit from the decedent, had actual knowledge of the claim of heirship as evidenced by their hiring of an attorney, and, before the estate was closed, were properly allowed by the court to file their claim, the summons by publication requirement of § 91-1-29 was met, and all parties were given their day in court. This procedure sufficiently complied with the notice requirements of § 91-1-27 and § 91-1-29, and the filing requirements of § 91-1-15(3)(c). Perkins v. Thompson, 551 So. 2d 204, 1989 Miss. LEXIS 360 (Miss. 1989).

Illegitimate child has right to inherit in father's wrongful death claim, but such claim must be asserted and established by clear and convincing evidence under §§ 91-1-27 and 91-1-29. Ivy v. Illinois C. G. R. Co., 510 So. 2d 520, 1987 Miss. LEXIS 2619 (Miss. 1987).

Provided paternity is established as required by §§ 91-1-27 and 91-1-29, "children" under Federal Employers Liability Act means illegitimate as well as legitimate children. Ivy v. Illinois C. G. R. Co., 510 So. 2d 520, 1987 Miss. LEXIS 2619 (Miss. 1987).

When mother of decedent's alleged illegitimate child moved to intervene in case brought under Federal Employers Liability Act, it was incumbent on her to file petition in chancery court under § 91-1-27 and proceed under § 91-1-29, and intervention should have been denied because these statutes had not been followed; where parties agreed for circuit judge to hear issue of paternity on merits, case would not be reversed because wrong court decided issue; on merits, circuit judge was correct in dismissing proposed intervention because there was no clear and convincing evidence that decedent was child's natural father. Ivy v. Illinois C. G. R. Co., 510 So. 2d 520, 1987 Miss. LEXIS 2619 (Miss. 1987).

This section [Code 1942, § 1271] must be read as in pari materia with Code 1942, § 1270. Shepherd v. Townsend, 249 Miss. 383, 163 So. 2d 746, 1964 Miss. LEXIS 401 (Miss. 1964).

RESEARCH REFERENCES

Am. Jur.
23 Am. Jur. 2d, Descent and Distribution § 41 et seq.

CJS.
26B C.J.S., Descent and Distribution § 26 et seq.

Law Reviews.
Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March, 1982.

§ 91-1-31. Judgment as to descent of property cannot be assailed collaterally except for fraud.

A judgment so rendered as provided in Section 91-1-29 shall not be assailed collaterally, except for fraud, and shall be binding and conclusive upon all persons cited to appear from the date of its rendition, and upon all persons whomsoever from and after the expiration of two (2) years from the date on which the same was rendered, saving to minors and persons of unsound mind, the right to re-open said cause within one (1) year after attaining majority or being restored to sanity. A judgment so rendered shall thereupon be filed, recorded and indexed by the chancery clerk of the county where rendered in the general deed records of said county, just as if it were a deed of conveyance from said decedent to his heirs at law. And a certified copy of such judgment may likewise be filed, recorded and indexed in any other county where the decedent owned land at the date of his death.

HISTORY: Codes, 1906, § 2792; Hemingway's 1917, § 312; 1930, § 361; 1942, § 1272; Laws, 1991, ch. 573, § 128, eff from and after July 1, 1991.

Cross References — Saving of rights of infant when his real estate is sold or conveyed, see § 11-5-115.

Limitation of actions on domestic judgments generally, see §§ 15-1-43, 15-1-57.

Ratification of debt contracted during infancy, see § 15-3-11.

Proceedings pertaining to trusts and estates, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

An action alleging that funds distributed to a decedent's son under a prior decree which adjudicated the intestate distribution of the decedent's estate, were "wrongfully inherited" pursuant to § 91-1-25 because the decedent's son willfully caused the decedent's death, was barred by § 91-1-31. Johnson v. Howell, 592 So. 2d 998, 1991 Miss. LEXIS 986 (Miss. 1991).

Judgment or decree obtained by fraud is void, and may be cancelled or enjoined in a court of equity. Weems v. Vowell, 122 Miss. 342, 84 So. 249, 1920 Miss. LEXIS 438 (Miss. 1920).

RESEARCH REFERENCES

Am. Jur.

23 Am. Jur. 2d, Descent and Distribution § 65.

CJS.

26B C.J.S., Descent and Distribution §§ 154-157.

Law Reviews.

Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March, 1982.

CHAPTER 3.

UNIFORM SIMULTANEOUS DEATH LAW

Sec.
91-3-1. How chapter cited.
91-3-3. Construction.
91-3-5. Disposition of property in absence of evidence of survivorship.
91-3-7. Beneficiaries of another person's disposition of property.
91-3-9. Joint tenants or tenants by the entirety.
91-3-11. Insurance policies or contracts.
91-3-13. Chapter not to apply to persons dying before effective date.
91-3-15. Provision in will, etc., rendering chapter inapplicable.

§ 91-3-1. How chapter cited.

This chapter may be cited as the Uniform Simultaneous Death Law.

HISTORY: Codes, 1942, § 479-08; Laws, 1956, ch. 214, § 8, eff from and after July 1, 1956.

Comparable Laws from other States — Alabama: Code of Ala. §§ 43-7-1 through 47-7-8.
Alaska: Alaska Stat. § 13.12.702.
Arizona: A.R.S. § 14-2702.
Arkansas: A.C.A. §§ 28-10-201 through 28-10-212.
District of Columbia: D.C. Code §§ 19-501 through 19-509.
Georgia: O.C.G.A. §§ 53-10-1 through 53-10-6.
Guam: 15 Guam Code Ann. §§ 1301 through 1309.
Idaho: Idaho Code § 15-2-613.
Indiana: Burns Ind. Code Ann. §§ 29-2-14-1 through 29-2-14-8.
Iowa: Iowa Code §§ 633.523 through 635.529.
Kansas: K.S.A. §§ 58-708 through 58-718.
Kentucky: K.R.S. §§ 397.1001 through 397.1009.
Maine: 18 A.M.R.S. § 2-805.
Maryland: Md. Courts and Judicial Proceedings Code Ann. §§ 10-801 through 10-807.
Montana: Mont. Code Anno. § 72-2-712.
Nebraska: R.R.S. Neb. §§ 30-121 through 30-128.
Nevada: Nev. Rev. Stat. Ann. §§ 135.010 through 135.090.
New Hampshire: R.S.A. §§ 563:1 through 563:11.
New Jersey: N.J. Stat. §§ 3B:6-1 through 3B:6-7.
Ohio: O.R.C. Ann. § 2105.31 et seq.
Oklahoma: 58 Okl. St. §§ 1001 through 1008.
Oregon: O.R.S. §§ 112.570 through 112.590.
Rhode Island: R.I. Gen. Laws §§ 33-2-1 through 33-2-9.
South Carolina: S.C. Code Ann. 62-1-501 through 62-1-508.
Tennessee: Tenn. Code Ann. §§ 31-3-101 through 31-3-105.
Vermont: 14 V.S.A. §§ 621 through 627.
Virginia: Va. Code Ann. §§ 64.2-2200 through 64.2-2208.
Washington: Rev. Code Wash. § 11.05A.010 et seq.
West Virginia: W. Va. Code §§ 42-5-1 through 42-5-10.
Wyoming: Wyo. Stat. §§ 2-13-101 through 2-13-107.

RESEARCH REFERENCES

ALR.

Construction, application, and effect of Uniform Simultaneous Death Act. 39 A.L.R.3d 1332.

Am. Jur.

Am. Jur. 2d Desk Book, Doc. No. 129, jurisdictions adopting Uniform Simultaneous Death Law.

Practice References.

Bickel and Flannery, Living Trusts: Forms and Practice (Matthew Bender).

Burke, Friel, and Gagliardi, Modern Estate Planning, Second Edition (Matthew Bender).

Christensen, International Estate Planning, Second Edition (Matthew Bender).

Mobley, Robinson and Hedrick, Pritchard on the Law of Wills and Administration of Estates, Seventh Edition (Michie).

Planning for Large Estates (Matthew Bender).

Schoenblum, Estate Planning Forms and Clauses (Matthew Bender).

Wyatt, Trust Administration and Taxation (Matthew Bender).

Estate Planning Package - LexisNexis Folio (LexisNexis).

Murphy's Will Clauses: Annotations and Forms with Tax Effects (Matthew Bender).

§ 91-3-3. Construction.

This chapter shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact the Uniform Simultaneous Death Law.

HISTORY: Codes, 1942, § 479-07; Laws, 1956, ch. 214, § 7, eff from and after July 1, 1956.

§ 91-3-5. Disposition of property in absence of evidence of survivorship.

Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this chapter.

HISTORY: Codes, 1942, § 479-01; Laws, 1956, ch. 214, § 1, eff from and after July 1, 1956.

Cross References — Presumption of death from long continued absence, see § 13-1-23.

JUDICIAL DECISIONS

1. In general.

No presumption as to survivorship as between persons killed in a common disaster arises under the Mississippi Uniform Simultaneous Death Act, Miss. Code Ann. §§ 91-3-1 through 91-3-15, nor is there a presumption of simultaneous death; the burden of proof is on the party whose claim depends on survivorship to establish the fact. Miller v. Miller (In re Estate of Miller), 840 So. 2d 703, 2003 Miss. LEXIS 116 (Miss. 2003).

Neither the Mississippi slayer's statute, Miss. Code Ann. § 91-1-5, or the Mississippi Uniform Simultaneous Death Act, Miss. Code Ann. §§ 91-3-1 through 91-

3-15 acted to entitle the estate of a wife who was killed by her husband in a murder-suicide to a child's share of the husband's estate; husband's son by a previous marriage was the husband's sole heir-at-law. Miller v. Miller (In re Estate of Miller), 840 So. 2d 703, 2003 Miss. LEXIS 116 (Miss. 2003).

RESEARCH REFERENCES

ALR.
Construction, application, and effect of Uniform Simultaneous Death Act. 39 A.L.R.3d 1332.

Am. Jur.
22A Am. Jur. 2d, Death §§ 258, 259.

CJS.
25A C.J.S., Death §§ 7, 16, 17.

§ 91-3-7. Beneficiaries of another person's disposition of property.

Where two (2) or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

HISTORY: Codes, 1942, § 479-02; Laws, 1956, ch. 214, § 2, eff from and after July 1, 1956.

§ 91-3-9. Joint tenants or tenants by the entirety.

Where there is no sufficient evidence that two (2) joint tenants have died otherwise than simultaneously the property so held shall be distributed one half (½) as if one had survived and one half (½) as if the other had survived. If there are more than two (2) joint tenants and all of them have so died the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

HISTORY: Codes, 1942, § 479-03; Laws, 1956, ch. 214, § 3, eff from and after July 1, 1956.

§ 91-3-11. Insurance policies or contracts.

Where the insured and the beneficiary in a policy of life or accident insurance have died and there is insufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

HISTORY: Codes, 1942, § 479-04; Laws, 1956, ch. 214, § 4, eff from and after July 1, 1956.

§ 91-3-13. Chapter not to apply to persons dying before effective date.

This chapter shall not apply to the distribution of the property of a person who has died before July 1, 1956.

HISTORY: Codes, 1942, § 479-05; Laws, 1956, ch. 214, § 5, eff from and after July 1, 1956.

§ 91-3-15. Provision in will, etc., rendering chapter inapplicable.

This chapter shall not apply in the case of wills, living trusts, deeds, contracts of insurance or other contracts wherein provision has been made for distribution of property different from the provisions of this chapter.

HISTORY: Codes, 1942, § 479-06; Laws, 1956, ch. 214, § 6, eff from and after July 1, 1956.

RESEARCH REFERENCES

ALR.

Wills: construction of provision as to which of two or more parties shall be deemed the survivor in case of death simultaneously, in a common disaster, or within a specified period of time. 40 A.L.R.3d 359.

CHAPTER 5.

WILLS AND TESTAMENTS

Sec.

91-5-1. Who may execute; signature; attestation.
91-5-3. Revocations.
91-5-5. Children born after making of the will.
91-5-7. Bequests not to lapse in certain cases.
91-5-9. Devise to witness void.
91-5-11. Devise or bequest to trustee.
91-5-13. Creditor competent witness to will.
91-5-15. Nuncupative wills.
91-5-17. Parties in interest to nuncupative will to be cited.
91-5-19. Nuncupative will not to be proven after six months unless reduced to writing.
91-5-21. Members of armed forces and mariners at sea excepted.
91-5-23. Provision for husband or wife to be in bar.
91-5-25. Right of spouse to renounce will; form of renunciation; right to intestate share.
91-5-27. Effect of no provision for husband or wife.
91-5-29. Effect of wife or husband having separate estate.
91-5-31. Repealed.
91-5-33. Person who kills another not to take under his will.
91-5-35. Will devising real property admitted to probate as muniment of title only; petition signature; rights of interested parties unaffected.

§ 91-5-1. Who may execute; signature; attestation.

Every person eighteen (18) years of age or older, being of sound and disposing mind, shall have power, by last will and testament, or codicil in writing, to devise all the estate, right, title and interest in possession, reversion, or remainder, which he or she hath, or at the time of his or her death shall have, of, in, or to lands, tenements, hereditaments, or annuities, or rents charged upon or issuing out of them, or goods and chattels, and personal estate of any description whatever, provided such last will and testament, or codicil, be signed by the testator or testatrix, or by some other person in his or her presence and by his or her express direction. Moreover, if not wholly written and subscribed by himself or herself, it shall be attested by two (2) or more credible witnesses in the presence of the testator or testatrix.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (14); 1857, ch. 60, art. 34; 1871, § 2388; 1880, § 1262; 1892, § 4488; 1906, § 5078; Hemingway's 1917, § 3366; 1930, § 3550; 1942, § 657; Laws, 1970, ch. 324, § 1; Laws, 1973, ch. 314, § 1, eff from and after passage (approved March 14, 1973).

Cross References — Definition of term "will," see § 1-3-59.
Recording of wills, see § 9-5-137.
Descent and distribution generally, see § 91-1-1 et seq.
Proof of wills by handwriting, see § 91-7-7.
Release of powers of appointment, see § 91-15-1 et seq.
Criminal offense of alteration, destruction, or secretion of wills, see § 97-9-77.

Criminal offense of forgery of record of will, see § 97-21-45.

Criminal offense of forgery or counterfeiting of will, see § 97-21-63.

Applicability of Mississippi Rules of Civil Procedure to proceedings which are subject to the provisions of Title 91, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. What interests are devisable.
3. Establishment of lost or destroyed will.
4. Reformation or revocation.
5. Construction of wills.
6. —Lapsed or void devises; property not devised by will.
7. Effect of mistake.
8. Testamentary capacity.
9. —Determination; generally.
10. —Sufficiency.
11. —Undue influence.
12. Execution, in general.
13. —Codicil.
14. Signature or subscription.
15. Attestation.
16. —Validity; particular circumstances.
17. —Presence of witnesses.
18. Particular instruments as valid testamentary instruments.
19. Holographic wills.
20. —Date requirement.
21. —Reference to extrinsic documents.
22. —Construction.
23. —Particular instruments as valid holographic wills.
24. Probate; requirement, generally.
25. —Practice and procedure.
26. —Evidence.
27. — —Admissibility.
28. —Burden of proof.

1. In general.

Denial by a chancery court of the payment of attorney fees in a will contest was proper because testators did not have the authority in Mississippi to require unsuccessful will contestants to pay attorney fees for their adversaries, as there was no statutory law permitting it. Parker v. Benoist, 160 So. 3d 198, 2015 Miss. LEXIS 113 (Miss. 2015).

Competent person may dispose of property by will in any manner not prohibited by law. Parker v. Broadus, 128 Miss. 699, 91 So. 394, 1922 Miss. LEXIS 152 (Miss. 1922).

Right to devolve property by will and rights thereunder are statutory. Woodville v. Pizzati, 119 Miss. 442, 81 So. 127, 1919 Miss. LEXIS 22 (Miss. 1919).

Statute upon wills and testaments authorizes every person sui juris to devise all his estate, real or personal, of any description whatever, and such a will unless broken by heirs or renounced by the widow governs the entire disposition of his estate. McGaughey v. Eades, 78 Miss. 853, 29 So. 516, 1901 Miss. LEXIS 132 (Miss. 1901).

2. What interests are devisable.

A testator cannot, by will, dispose of property which he or she placed, during his or her lifetime, in a validly created joint tenancy account with rights of survivorship. A subsequent will does not destroy the joint tenancy and does not terminate that tenancy and divest the corpus of it into the estate of the testator. In re Will & Estate of Strange, 548 So. 2d 1323, 1989 Miss. LEXIS 431 (Miss. 1989).

A person of sound and disposing mind whose property has been placed under conservatorship may execute a valid will and may do so without the knowledge of the conservator or the permission of the court. Lee v. Lee, 337 So. 2d 713, 1976 Miss. LEXIS 1588 (Miss. 1976).

This statute authorizes devises of all interests in real estate, whether present or future. Hemphill v. Mississippi State Highway Com., 245 Miss. 33, 145 So. 2d 455, 1962 Miss. LEXIS 529 (Miss. 1962).

A testator has the right to devise or bequeath all of the property which he may have, not only at the time the will is executed, but any that he may thereafter acquire and own at the time of his death. Milton v. Milton, 193 Miss. 563, 10 So. 2d 175, 1942 Miss. LEXIS 131 (Miss. 1942).

A will does not operate as substitution of legatees as beneficiaries in testator's life policy payable to his executors, administrators or assigns. Magee v. Bank of

Hattiesburg & Trust Co., 134 Miss. 126, 98 So. 541, 1923 Miss. LEXIS 243 (Miss. 1923).

Under this section [Code 1942, § 657] one may devise land acquired after the will. McRae v. Lowery, 80 Miss. 47, 31 So. 538, 1902 Miss. LEXIS 225 (Miss. 1902).

3. Establishment of lost or destroyed will.

The evidence was sufficient to rebut the presumption that a testator revoked a will which was known to have been made and was kept in a locked drawer of the testator's desk, but which was not found upon his death, where the testator had a close and affectionate relationship with his daughter who was the sole beneficiary under the will, he talked to people about his will and told them that he was leaving his entire estate to his daughter, there was nothing in the record suggesting that he had changed his mind, the desk in which the will was kept was subject to entry by others, and there was evidence that someone had entered the house and the desk area after the testator died and emptied the contents of filing cabinet drawers. Matter of Berry v. Smith, 584 So. 2d 400 (Miss. 1991).

The trial court properly set aside a jury verdict finding that the decedent's lost or destroyed will had been properly executed where there was neither direct nor secondary evidence that the alleged lost or destroyed will was ever signed, witnessed, and executed according to law. Gaston v. Gaston, 358 So. 2d 376, 1978 Miss. LEXIS 2527 (Miss. 1978).

Although there was no direct proof that the testatrix had destroyed the will, proof showing that the will was in her possession when last seen and that it could not be found after her death, together with other evidence, sustained the chancellor's finding that complainant's proof was insufficient to establish the existence of the alleged lost or destroyed will at the time of testatrix's death, or to overcome the presumption that the will had been destroyed by the testatrix during her lifetime with the intention of revoking it. James v. Barber, 244 Miss. 234, 142 So. 2d 21, 1962 Miss. LEXIS 443 (Miss. 1962).

Failure to locate an instrument apparently alleged to have revoked a lost will of which an admittedly true copy was produced, coupled with evidence that the devisee named had for years devoted himself to fulfillment of an oral agreement with the testator, sustained establishment of the lost will. Denson v. Denson, 203 Miss. 146, 33 So. 2d 311, 1948 Miss. LEXIS 242 (Miss. 1948).

To establish destroyed will, interested parties must establish date thereof, attesting witnesses, and whether wholly or partly written and subscribed in testator's genuine handwriting. Didlake v. Ellis, 158 Miss. 816, 131 So. 267, 1930 Miss. LEXIS 112 (Miss. 1930).

Personal property not disposed of by will is distributed under statute of descent and distribution. Eaton v. Broaderick, 101 Miss. 26, 57 So. 298, 1911 Miss. LEXIS 95 (Miss. 1911).

4. Reformation or revocation.

Any instrument expressly revoking a will must meet the requirements of Mississippi Code § 91-5-1. Trotter v. Trotter, 490 So. 2d 827, 1986 Miss. LEXIS 2485 (Miss. 1986).

The mental capacity required to revoke a will is the same as that required to make one. Trotter v. Trotter, 490 So. 2d 827, 1986 Miss. LEXIS 2485 (Miss. 1986).

Courts cannot add to or take from a will or make a new will for the parties. Williams v. Gooch, 208 Miss. 223, 44 So. 2d 57, 1950 Miss. LEXIS 241 (Miss. 1950).

Courts will not by construction add to the terms of the will. Jones v. Carey, 122 Miss. 244, 84 So. 186, 1920 Miss. LEXIS 432 (Miss. 1920).

Courts can no more supply defects in the execution of a will or codicil than they can add to or subtract from its words. Johnson v. Delome Land & Planting Co., 77 Miss. 15, 26 So. 360, 1899 Miss. LEXIS 55 (Miss. 1899).

No court can decree the reformation and correction of a will. Schlottman v. Hoffman, 73 Miss. 188, 18 So. 893, 1895 Miss. LEXIS 105 (Miss. 1895).

5. Construction of wills.

Where the residuary clause of a will devised the remainder of a trust to named persons, "my heirs at law, including", following which all the testator's heirs were named with the exception of his two older children by his first wife, and the will was carefully drawn, with gifts made to the testator's heirs at law in other parts of the will without naming them individually, it was evident that the testator intended under the residuary clause to make a gift to certain named individuals, rather than to a class. Eubanks v. Lucius, 257 So. 2d 215, 1972 Miss. LEXIS 1451 (Miss. 1972).

A will is to be construed so as to avoid intestacy if that can be reasonably done considering the language employed in the instrument and the circumstances confronting the testator at the time of execution. Martin v. Eslick, 229 Miss. 234, 90 So. 2d 635, 1956 Miss. LEXIS 604 (Miss. 1956).

Where, at the time a testator made his will, he owned property designated in the will as the "home place," which he afterwards disposed of, and acquired other property which answered the same description, and owned it at his death, the will must be applied thereto, unless something therein indicates that the testator does not so intend. Milton v. Milton, 193 Miss. 563, 10 So. 2d 175, 1942 Miss. LEXIS 131 (Miss. 1942).

The term "reversion" is not used in a restricted sense, but includes the right of reversion which would mature into an estate upon the happening of an uncertain future contingency the same as upon the happening of an event which at the time of the execution of a conveyance is certain to occur in the future. Ricks v. Merchants Nat'l Bank & Trust Co., 191 Miss. 323, 2 So. 2d 344, 1941 Miss. LEXIS 128 (Miss. 1941).

A possibility of reverter owned by a testatrix at the time of her death passed to her residuary devisee, and did not descend according to the laws of descent and distribution. Ricks v. Merchants Nat'l Bank & Trust Co., 191 Miss. 323, 2 So. 2d 344, 1941 Miss. LEXIS 128 (Miss. 1941).

A will does not operate as substitution of legatees as beneficiaries in testator's life policy payable to his executors, administrators or assigns. Magee v. Bank of Hattiesburg & Trust Co., 134 Miss. 126, 98 So. 541, 1923 Miss. LEXIS 243 (Miss. 1923).

This section [Code 1942, § 657] is not qualified by Code 1942, § 700, defining the word "written." Sheehan v. Kearney, 82 Miss. 688, 21 So. 41, 1903 Miss. LEXIS 99 (Miss. 1903).

6. —Lapsed or void devises; property not devised by will.

Under this section [Code 1942, § 657] and Code 1942, § 831, a residuary devise or bequest carries everything the testator has attempted but failed to dispose of, unless a contrary intention appears from the will. Oliphant v. Skelton, 230 Miss. 518, 93 So. 2d 181, 1957 Miss. LEXIS 392 (Miss. 1957).

Where a testatrix devised to her two daughters a life interest in certain real estate with the remainder over to their descendants, bequeathed one dollar each to her other children, and devised to the same two daughters the rest of her estate, both real and personal, the two daughters, having no children, took a fee to the realty. Oliphant v. Skelton, 230 Miss. 518, 93 So. 2d 181, 1957 Miss. LEXIS 392 (Miss. 1957).

Remainder goes to heirs, where devise thereof is void. Wheat v. Lacals, 139 Miss. 300, 104 So. 73, 1925 Miss. LEXIS 130 (Miss. 1925).

Devise lapsed because of death of devisee descends as undisposed of property. Marx v. Hale, 131 Miss. 290, 95 So. 441, 1922 Miss. LEXIS 289 (Miss. 1923).

7. Effect of mistake.

A mistaken belief of an extrinsic fact, even though it causes a testator to make a will differently than he otherwise would had he known the truth, is insufficient to avoid a will. In re Estate of Vick, 557 So. 2d 760, 1989 Miss. LEXIS 434 (Miss. 1989).

8. Testamentary capacity.

Trial court did not err in granting beneficiaries summary judgment in a will contest because they established a prima facie case that the will was valid and that the testator possessed testamentary capacity, and the son failed to rebut the prima facie case with any summary-judgment evidence that there was a genuine issue for trial; the will was admitted to probate, and the beneficiaries attached affidavits of individuals that testified as to the testator's mental capacity. Froemel v. Estate of Froemel, 248 So. 3d 876, 2018 Miss. App. LEXIS 230 (Miss. Ct. App. 2018).

The mental capacity required to revoke a will is the same as that required to make one. Trotter v. Trotter, 490 So. 2d 827, 1986 Miss. LEXIS 2485 (Miss. 1986).

Capacity relates to time of execution; temporary insanity not presumed to continue until execution of will. Scally v. Wardlaw, 123 Miss. 857, 86 So. 625, 1920 Miss. LEXIS 89 (Miss. 1920).

Sound and disposing mind of testator is essential. Gathings v. Howard, 122 Miss. 355, 84 So. 240, 1920 Miss. LEXIS 439 (Miss. 1920).

One of testamentary capacity may execute will from any motive. Moore v. Parks, 122 Miss. 301, 84 So. 230, 1920 Miss. LEXIS 437 (Miss. 1920).

Where on an issue devisavit vel non the question is whether the testator was sane or insane the contestants are not required to prove his sanity beyond all reasonable doubt. King v. Rowan, 82 Miss. 1, 34 So. 325, 1903 Miss. LEXIS 158 (Miss. 1903).

9. —Determination; generally.

The granting of an instruction in a will contest which advised the jury that it could not return a verdict for the proponent if it found that the testatrix was in any way influenced, or guided, or directed, about, or in, or concerning the signing, publication, or the securing of attestation of the will by any person whomsoever, was reversible error, since it is undue influence that vitiates a will; a testator has the right to be directed and assisted in the preparation of his will, and may have any aid or direction which he desires. Estate of Briscoe v. Briscoe, 255 So. 2d 313, 1971 Miss. LEXIS 1284 (Miss. 1971).

In determining whether the chancellor should have granted a peremptory instruction on the question of testamentary capacity the court must assume as true all the facts which contestant's evidence fairly tends to establish, together with all reasonable inferences to be deduced therefrom. Lowrey v. Wilkinson, 222 Miss. 201, 75 So. 2d 643, 1954 Miss. LEXIS 640 (Miss. 1954).

In a proceeding devisavit vel non involving a will which was challenged on the ground of lack of testamentary capacity and of undue influence, the submission to jury of both issues was in error where the evidence as to undue influence was insufficient. Thames v. Thames, 233 Miss. 24, 100 So. 2d 868, 1958 Miss. LEXIS 352 (Miss. 1958).

In will contest on ground of lack of testamentary capacity and existence of undue influence, it should be assumed that general verdict of jury against validity of will was on ground of want of testamentary capacity which was amply supported by evidence, where proof was insufficient to sustain verdict on ground of undue influence. Blalock v. Magee, 205 Miss. 209, 38 So. 2d 708, 1949 Miss. LEXIS 426 (Miss. 1949).

In will contest on ground of lack of testamentary capacity and existence of undue influence, judgment on general verdict against validity of will returned under instruction as to burden of proponents to establish both testamentary capacity and lack of undue influence by preponderance of evidence will not be reversed because of refusal to grant peremptory instruction on question of undue influence where there is sufficient evidence on question of want of testamentary capacity to warrant jury's finding. Blalock v. Magee, 205 Miss. 209, 38 So. 2d 708, 1949 Miss. LEXIS 426 (Miss. 1949).

In will contest on ground of lack of testamentary capacity and existence of undue influence, general verdict of jury on issue of whether or not proponents have shown by preponderance of evidence both testamentary capacity and lack of undue influence at time of execution of will should be sustained if proponents fail to prove either or both of these necessary requirements. Blalock v. Magee, 205 Miss. 209, 38 So. 2d 708, 1949 Miss. LEXIS 426 (Miss. 1949).

It is the general rule that the nature and extent of testator's estate may be shown on issue of testamentary capacity and undue influence. Norman v. Norman, 196 Miss. 597, 18 So. 2d 130, 1944 Miss. LEXIS 239 (Miss. 1944).

Unnatural or unreasonable provisions not sufficient to show incapacity, but may be considered with other evidence. Scally v. Wardlaw, 123 Miss. 857, 86 So. 625, 1920 Miss. LEXIS 89 (Miss. 1920).

Occasional fits of anger not connected with the will do not show incapacity. Moore v. Parks, 122 Miss. 301, 84 So. 230, 1920 Miss. LEXIS 437 (Miss. 1920).

10. —Sufficiency.

Children failed to come forward with evidence to overcome the prima facie case of their father's testamentary capacity; the father's physical weakness did not preclude him from making a will, and a bare and unexplained assertion that his mental state was "terrible" did not raise a jury issue as to his mental capacity. The father's agreement that he was no longer up to the task of campaigning for elected office did not amount to an admission or even evidence that he lacked the mental capacity to sign a will, and all testimony relevant to his mental capacity on March 2, 2009, indicated that he had sufficient capacity to execute both a general power of attorney and a will. Callington v. Gardner (In re Estate of Gardner), 228 So. 3d 921, 2017 Miss. App. LEXIS 95 (Miss. Ct. App.), cert. denied, 232 So. 3d 785, 2017 Miss. App. LEXIS 360 (Miss. Ct. App. 2017).

Son showed a prima facie case of the son's deceased mother's testamentary capacity because (1) the son's subscribing witness's testimony to such capacity had more weight than contrary testimony of daughters who were not present at the will's execution, and (2) further testimony on the mother's condition rebutted the contrary testimony. Terry v. Phelps (In re Estate of Phelps), 180 So. 3d 835, 2015 Miss. App. LEXIS 642 (Miss. Ct. App. 2015).

Trial court properly granted a directed verdict and a peremptory instruction in favor of will proponents on the issue of whether the testator of a will had testamentary capacity to make a will at the time it was executed as the attesting witnesses indicated that the testator had capacity at the moment of the will's execution despite claims by the will contestants that the testator was lethargic, jaundiced, on medication, and hallucinating on days prior to signing the will. Noblin v. Burgess, 54 So. 3d 282, 2010 Miss. App. LEXIS 287 (Miss. Ct. App. 2010), cert. denied, 53 So. 3d 760, 2011 Miss. LEXIS 109 (Miss. 2011).

Trial court erred by giving the issue of the decedent's testamentary capacity to the jury where there was no indication that the decedent lacked testamentary capacity; on the contrary, she left her estate to the natural objects of her bounty, the decedent was capable of determining the property disposition that she wished, and she was cognizant of the nature of her actions. McClendon v. McClendon (In re Estate of Pigg), 877 So. 2d 406, 2003 Miss. App. LEXIS 851 (Miss. Ct. App. 2003), cert. denied, 878 So. 2d 66, 2004 Miss. LEXIS 875 (Miss. 2004).

A court did not err in finding that a testator had the necessary mental capacity to make a valid will where the proponent of the will made a prima facie case of testamentary capacity by placing into evidence the will of the decedent, the affidavits of subscribing witnesses, and the judgment admitting the will to probate, and the only evidence offered by the contestant was the testimony of an adverse witness whose testimony did not indicate that the testator lacked testamentary capacity. In re Will of Wasson, 562 So. 2d 74, 1990 Miss. LEXIS 249 (Miss. 1990).

The evidence in a will contest action brought by the testator's son was insufficient to establish testamentary incapacity where 2 witnesses stated that the testator had made statements of hostility toward his son and cursed him, neither witness could identify the reason for this attitude and expressed the belief that the son tried untiringly to please his father and obey him, and one witness testified to the testator's drinking alcoholic beverages, "some" every day. In re Last Will & Testament of Dickey, 542 So. 2d 903, 1989 Miss. LEXIS 194 (Miss. 1989).

Chancellor's finding that the testatrix lacked mental capacity to make a will was supported by a number of witnesses who had testified as to the testatrix's mental and physical condition on the day before the day after the alleged execution of the will, and it further appeared that for the three days involved the testatrix's condition was continuous. Kelker v. Jordan, 228 Miss. 847, 89 So. 2d 858, 1956 Miss. LEXIS 573 (Miss. 1956).

On issue of testamentary capacity, it is for serious consideration of jury as to whether or not it is either natural or rational that testatrix should devise to sister and nephew half interest in home occupied by husband, when testatrix has ample personal assets to provide for them to extent greater than value of undivided interest devised in residence. Blalock v. Magee, 205 Miss. 209, 38 So. 2d 708, 1949 Miss. LEXIS 426 (Miss. 1949).

It is neither unnatural nor evidence of abnormality that testatrix in her will should favor widowed sister, who was not in as good financial circumstances as other members of family and also her nephew who had lived in her home for many years. Blalock v. Magee, 205 Miss. 209, 38 So. 2d 708, 1949 Miss. LEXIS 426 (Miss. 1949).

It cannot be said that an eccentric old man was not in one of his admitted periods of calm and discretion at the time he executed a will when at that time he made intelligent and solicitous inquiry as to the contents and import of the will. Ward v. Ward, 203 Miss. 32, 33 So. 2d 294, 1948 Miss. LEXIS 227 (Miss. 1948).

Testator's disposition of his property to certain nephews and nieces to the exclusion of other nephews and nieces and an incompetent brother, was natural and just and did not, of itself, show lack of testamentary capacity or undue influence, where beneficiaries resided near testator, worked with and assisted him in the operation of his farm, and cared for testator during illness. Norman v. Norman, 196 Miss. 597, 18 So. 2d 130, 1944 Miss. LEXIS 239 (Miss. 1944).

Chancellor's finding of testamentary capacity reversed where will showed such capacity lacking and will made in contemplation of suicide. Johnson v. Stansell, 94 Miss. 923, 48 So. 619, 1909 Miss. LEXIS 356 (Miss. 1909).

11. —Undue influence.

In a will contest amongst siblings, the proponent and beneficiary was unable to overcome the presumption of undue influence because, inter alia, the beneficiary was substantially involved in the procurement of the will and paid the costs of the will's execution, and the testator, who was the siblings' mother, was not aware of her total assets and their worth, was totally dependent on the beneficiary to handle her finances, and did not seek advice from a person disconnected to the beneficiary. Thomas v. Thomas, 122 So. 3d 111, 2013 Miss. App. LEXIS 512 (Miss. Ct. App. 2013).

Finding that the decedent had the requisite mental capacity when he executed his power of attorney was appropriate because the presumption of any undue influence was rebutted; although the decedent's friend was aware of the decedent's deteriorating health, the friend, along with his family, acted unselfishly to lend his support to the decedent. Further, the record indicated that the decedent was aware of his assets and he controlled his own finances. Mitchell v. Poynor (In re Estate of Hall), 32 So. 3d 506, 2009 Miss. App. LEXIS 331 (Miss. Ct. App. 2009), cert. denied, 31 So. 3d 1217, 2010 Miss. LEXIS 187 (Miss. 2010).

Where appellants' sole evidence that a will was procured by appellee's undue influence over his father was testimony from appellee's ex-wife, who had no firsthand knowledge and testified only as to conversations she allegedly had with appellee, and her testimony was fully refuted by appellee, appellants failed to meet their burden to show undue influence. Hensley v. Harris, 870 So. 2d 1227, 2003 Miss. App. LEXIS 791 (Miss. Ct. App. 2003), cert. denied, 870 So. 2d 666, 2004 Miss. LEXIS 419 (Miss. 2004).

A daughter failed to overcome the presumption of undue influence arising from her father's execution of a will devising all of his property to her where the father had previously executed a will devising the property to all of his children, the father developed a dislike of all of his children except the daughter within two years after the daughter moved in with the father to care for him after he suffered a stroke, the daughter did nothing to discourage the unwarranted ill will which her father developed towards her brothers and sisters, she took control of the father's financial affairs and initiated the preparation of the second will by contacting a lawyer of her selection, she stayed in the waiting room of the lawyer's office while the will was being executed, she paid the lawyer at the father's request by writing a check from the father's account, and the execution of the will was kept secret by the father and the daughter, though all matters concerning the father had previously been discussed by all the children and all of them had participated in making decisions which concerned his well being and financial affairs. In re Estate of Woodall, 593 So. 2d 471, 1992 Miss. LEXIS 2 (Miss. 1992).

The test for rebutting a presumption of undue influence has been modified and no longer requires the independent advice of a competent person, but instead requires a showing of the grantor's "independent consent and action." Marsalis v. Lehmann, 566 So. 2d 217, 1990 Miss. LEXIS 532 (Miss. 1990).

One of the many ways of effecting undue influence upon a testator is by misrepresentation of fact; the misrepresentation may be made with the deliberate intent to deceive, knowing full well that it is false, as well as recklessly made without regard to its truth or falsity. In order to set aside a will resulting solely from the misrepresentation of a beneficiary, it must first be established that the representation was not true and actually influenced the testator to make a will he or she would not otherwise have made, that but for the misrepresentation by the beneficiary, the will would have been entirely different. In re Estate of Vick, 557 So. 2d 760, 1989 Miss. LEXIS 434 (Miss. 1989).

There was sufficient evidence of undue influence exercised upon a testatrix, in the absence of which she would not have executed the will she made which left an undivided ½ interest in property owned by the testatrix and her husband to their daughters, where one of the testatrix's daughters made persistent efforts to get the testatrix to secure for her some interest in the property, the daughter constantly badgered the testatrix when she was well advanced in years and in failing health, the daughter played a material part in convincing the testatrix that her husband had devised all his real property to their sons, and the testatrix's only reason for executing the will was her conviction that her husband was devising all his property to the sons and it was her desire to treat all the children equally. In re Estate of Vick, 557 So. 2d 760, 1989 Miss. LEXIS 434 (Miss. 1989).

An attorney did not overcome the presumption of undue influence over an elderly couple with whom he had entered into an oral arrangement under which couple made the attorney a signatory of their bank account with the authority to write checks for their needs in the event they became incapacitated and with the attorney being entitled to the balance of the account upon the couples' death where the attorney failed to advise the couple to secure independent advice and counsel, even though the arrangement was accomplished without any intent on the part of the attorney to commit any wrongful act. Lowrey v. Last Will & Testament of Smith, 543 So. 2d 1155, 1989 Miss. LEXIS 185 (Miss. 1989).

Although testatrix' will was prepared by an independent attorney personally employed by her for that purpose, evidence established that the will under which her regular attorney was the principal beneficiary had been procured by the exercise of undue influence upon testatrix by him. Holland v. Traylor, 227 So. 2d 829 (Miss. 1969).

In the absence of proof of an actual attempt to deceive the testator, his mistaken belief that the principal devisee was his son would have been insufficient to show undue influence. Provenza v. Provenza, 201 Miss. 836, 29 So. 2d 669, 1947 Miss. LEXIS 453 (Miss. 1947).

Jury may consider disposition of property, confidential relations, and mental and physical conditions of testator in determining undue influence; jury are sole judges as to undue influence. Isom v. Canedy, 128 Miss. 64, 88 So. 485, 1921 Miss. LEXIS 293 (Miss. 1921).

Undue influence may be made out by circumstantial evidence. Jamison v. Jamison, 96 Miss. 288, 51 So. 130, 1909 Miss. LEXIS 56 (Miss. 1909).

12. Execution, in general.

Chancery court properly granted summary judgment to a testator's siblings in their contest to the testator's will because the ninth page of the will naming a friend of the testator as the sole beneficiary of her estate failed to meet the statutory requirements of a valid codicil or holographic will where it constituted a separate document from the first eight pages of the will (it was typed in a different font style and size than the rest of the will and contained its own separate signature line), the will failed to incorporate it by reference, and there was no evidence that the testator signed the ninth page in the presence of two credible witnesses or that she published or acknowledged it as her will in the presence of witnesses. Murakami v. Young (In re Will of Massingale), 199 So. 3d 710, 2016 Miss. App. LEXIS 539 (Miss. Ct. App. 2016).

Although a testator did not affix her initials in the margins of the first two pages of her four-page will, the will was validly executed because there was evidence the testator actually signed the will in the presence of two attesting witnesses. Thomas v. Thomas, 122 So. 3d 111, 2013 Miss. App. LEXIS 512 (Miss. Ct. App. 2013).

The chancery court correctly denied probate to a document offered as the will of a decedent, where the document was neither wholly written and subscribed by the testator nor attested by two or more credible witnesses in the presence of the testator as required by § 91-5-1, but was entirely typewritten, signed by the decedent, and had a certificate of a notary public that it had been "sworn to and subscribed before me" followed by the signature and seal of the notary. The history of will contests in Mississippi supports the view that the requirements that there be two attesting witnesses to a will and, moreover, that it be attested by them in the presence of the testator, and that such attestation be evidenced by the affixation of their signatures to document, are indispensable safeguards of the integrity of testimentary documents. Batchelor v. Powers, 348 So. 2d 776, 1977 Miss. LEXIS 2108 (Miss. 1977).

Where a testator in his will clearly expressed a desire that his estate be held together, and it was evident that his intent could be followed only by execution of the trust recommended by the testator in his will, the form of the trust attached to the will was mandatory, and it was proper that the trust was admitted to probate and established, notwithstanding that the testator's words in the will attaching a draft of his plans for the trust, and recommending it as a guide, were merely precatory. Farmer v. Broadhead, 230 So. 2d 779, 1970 Miss. LEXIS 1561 (Miss. 1970).

As a general rule of law, courts tend to sustain a testamentary document as having been legally executed if it is possible to do so consistent with statutory requirements. Lyle v. Shannon, 228 So. 2d 594 (Miss. 1969).

Ordinarily, substantial compliance with statutory formalities in the execution of a will is sufficient in the absence of a suggestion of fraud, deception, undue influence or mental incapacity. Lyle v. Shannon, 228 So. 2d 594 (Miss. 1969).

It is the requisite to a valid will that it be executed as prescribed by statute. Boyles Coffee Co. v. Anderson, 218 So. 2d 843, 1969 Miss. LEXIS 1621 (Miss. 1969).

No matter how earnestly one may desire and intend to make a will, a paper, although fully intended by the maker to be a will, is ineffective and invalid unless its execution meets statutory requirements. Boyles Coffee Co. v. Anderson, 218 So. 2d 843, 1969 Miss. LEXIS 1621 (Miss. 1969).

The purpose of statutes prescribing formalities for the execution of wills is not to restrict the power of testator to dispose of his property, but it is to guard against mistakes, impositions, undue influences, fraud, deception, etc., which would divert the property of the testator from those intended by him or her to inherit same. Boyles Coffee Co. v. Anderson, 218 So. 2d 843, 1969 Miss. LEXIS 1621 (Miss. 1969).

Although the intention of the testator is paramount in the construction of wills, the search for the testator's intention does not begin until there is a will executed in accordance with the requirements of this section [Code 1942, § 657]. In re Estate of King, 203 So. 2d 581, 1967 Miss. LEXIS 1383 (Miss. 1967).

An instrument executed by a husband and wife which purported to be their last will and testament but which was not witnessed by two subscribing witnesses and was neither wholly in the handwriting of each, nor wholly in the handwriting of either, was invalid under the provisions of this section [Code 1942, § 657]. Seab v. Seab, 203 So. 2d 478, 1967 Miss. LEXIS 1373 (Miss. 1967).

A will was not executed within the requirements of this section [Code 1942, § 657] where it appeared that after the witnesses, who were in a different room, had signed the instrument and the testatrix's name had been signed thereto, it was then carried into the room of the testatrix who merely touched the pen. Kelker v. Jordan, 228 Miss. 847, 89 So. 2d 858, 1956 Miss. LEXIS 573 (Miss. 1956).

Methods of executing will, and who may execute one, are defined by statute. Didlake v. Ellis, 158 Miss. 816, 131 So. 267, 1930 Miss. LEXIS 112 (Miss. 1930).

Publication and attestation of will may be by construction. Green v. Pearson, 145 Miss. 23, 110 So. 862, 1927 Miss. LEXIS 130 (Miss. 1927).

The writing of a will by a witness, at the request of the deceased, and embodying therein the disposition the deceased desired to make of his property, and the signing of the will by the deceased, was a sufficient declaration by the latter that the paper he had signed was his last will and testament, it being unnecessary for him to so declare in appropriate words. Green v. Pearson, 145 Miss. 23, 110 So. 862, 1927 Miss. LEXIS 130 (Miss. 1927).

Duly attested will need not be dated. Lee v. Stewart, 139 Miss. 287, 104 So. 89, 1925 Miss. LEXIS 139 (Miss. 1925).

Where there was a good faith effort to execute will, no technical construction should be allowed to defeat its purpose. Better v. Hirsch, 115 Miss. 614, 76 So. 555, 1917 Miss. LEXIS 239 (Miss. 1917).

If it appears from the face of a writing testamentary in its character that a contemplated voyage and the dangers incident thereto were merely the occasion of its execution, and that the testator's death while on the voyage was not made a condition upon which its validity depended, it will be operative and may be probated after his return and subsequent death. In re Redhead's Estate, 83 Miss. 141, 35 So. 761 (Miss. 1904).

13. —Codicil.

Failure to execute codicil as required of will rendered it invalid but did not affect the will. Hawkins v. Duberry, 101 Miss. 17, 57 So. 919, 1911 Miss. LEXIS 140 (Miss. 1911).

14. Signature or subscription.

The decedent executed the decedent's will in conformity with the law, while the proponent of the decedent's will authenticated not only the decedent's signature but also the signature of one of the attesting witnesses. Because the proponent of the will proved the authenticity of some of the signatures on the decedent's will, including the decedent's signature, the will should have been admitted to probate as the proponent met the proponent's burden to prove the due execution of the will. In re Will of Beard, — So. 3d —, 2021 Miss. App. LEXIS 214 (Miss. Ct. App. May 18, 2021).

The decedent executed the decedent's will in conformity with the law, while the proponent of the decedent's will authenticated not only the decedent's signature but also the signature of one of the attesting witnesses. Because the proponent of the will proved the authenticity of some of the signatures on the decedent's will, including the decedent's signature, the will should have been admitted to probate as the proponent met the proponent's burden to prove the due execution of the will. In re Will of Beard, — So. 3d —, 2021 Miss. App. LEXIS 214 (Miss. Ct. App. May 18, 2021).

The Chancellor made no error in submitting the issue to the jury of whether there was compliance with § 91-5-1, where contestants of a will specifically charged that the signature to the will was not the testator's, where proponents, in their answer, denied all such allegations, where all witnesses for the proponents and all evidence offered on their behalf indicated that the testator had signed the will without assistance, and where the proponents changed their testimony only after overwhelming evidence was offered by the contestants that, at the very least, the testator, who was 88 years old at the time the will was executed, was assisted in making her signature. Webster v. Kennebrew, 443 So. 2d 850, 1983 Miss. LEXIS 3056 (Miss. 1983).

A certificate of deposit payable to a decedent "P.O.D. (two named persons)" failed as a testamentary disposition by the decedent, since, among other things, it was neither in the handwriting of the decedent, nor signed by him, and did not otherwise conform to § 91-5-1. Rand v. Moore, 414 So. 2d 885, 1981 Miss. LEXIS 2466 (Miss. 1981).

A will was not executed within the requirements of this section [Code 1942, § 657] where it appeared that after the witnesses, who were in a different room, had signed the instrument, and the testatrix's name had been signed thereto, it was then carried into the room of the testatrix who merely touched the pen. Kelker v. Jordan, 228 Miss. 847, 89 So. 2d 858, 1956 Miss. LEXIS 573 (Miss. 1956).

This section [Code 1942, § 657] does not require the testator to sign in the presence of the witnesses. Phifer v. McCarter, 222 Miss. 415, 76 So. 2d 258, 1954 Miss. LEXIS 659 (Miss. 1954).

Any signature or mark signed by the testator, or by another in his presence and at his express direction, to the will, as and for his completed signature, and acknowledged and adopted by him as such at the time, in the presence of subscribing witnesses, is a sufficient signing. Wallace v. Harrison, 218 Miss. 153, 65 So. 2d 456, 1953 Miss. LEXIS 525 (Miss. 1953).

In a will contest, that the testatrix's name, which appeared beside her mark, was written there at her request, did not establish the invalidity of the will. Wallace v. Harrison, 218 Miss. 153, 65 So. 2d 456, 1953 Miss. LEXIS 525 (Miss. 1953).

The words "sign" and "subscribe" in this section [Code 1942, § 657] are not synonymous but are used in different senses. Baker v. Baker's Estate, 199 Miss. 388, 24 So. 2d 841, 1946 Miss. LEXIS 208 (Miss. 1946).

The section [Code 1942, § 657] is not qualified by Code 1942, § 700. A testator, though able to write, is not required to write his name to his will, but he may sign by mark. Sheehan v. Kearney, 82 Miss. 688, 21 So. 41, 1903 Miss. LEXIS 99 (Miss. 1903).

Where the testator consents to have his hand guided by another in signing his will, it is sufficient. Watson v. Pipes, 32 Miss. 451, 1856 Miss. LEXIS 227 (Miss. 1856).

15. Attestation.

Judgment which rejected the probate of the decedent's alleged last will and testament was affirmed because the witnesses each asserted that he had not witnessed a will, but a power of attorney; Miss. Code Ann. § 91-5-1 required attesting witnesses to a will know the purpose of their attestation. In re Estate of Griffith, 30 So. 3d 1190, 2010 Miss. LEXIS 159 (Miss. 2010).

The chancery court correctly denied probate to a document offered as the will of a decedent, where the document was neither wholly written and subscribed by the testator nor attested by two or more credible witnesses in the presence of the testator as required by § 91-5-1, but was entirely typewritten, signed by the decedent, and had a certificate of a notary public that it had been "sworn to and subscribed before me" followed by the signature and seal of the notary. The history of will contests in Mississippi supports the view that the requirements that there be to attesting witnesses to a will and, moreover, that it be attested by them in the presence of the testator, and that such attestation be evidence by the affixation of their signatures to document, are indispensable safeguards of the integrity of testamentary documents. Batchelor v. Powers, 348 So. 2d 776, 1977 Miss. LEXIS 2108 (Miss. 1977).

Although this section [Code 1942, § 657] states that a will, not wholly written and subscribed by the testator, must be attested by two or more creditable witnesses, the section means that witnesses must be competent rather than credible. Wallace v. Harrison, 218 Miss. 153, 65 So. 2d 456, 1953 Miss. LEXIS 525 (Miss. 1953).

One of the purposes of having witnesses of the will is to determine the capacity of the testator to make the will. Cowart v. Cowart, 211 Miss. 459, 51 So. 2d 775, 1951 Miss. LEXIS 376 (Miss. 1951).

The publication and attestation of a will may be by construction. One may speak by his actions as well as by word of mouth. Green v. Pearson, 145 Miss. 23, 110 So. 862, 1927 Miss. LEXIS 130 (Miss. 1927).

Will signed by one attesting witness before signature by testatrix held valid.

Gordon v. Parker, 139 Miss. 334, 104 So. 77, 1925 Miss. LEXIS 132 (Miss. 1925).

Witness must be satisfied with maker's testamentary capacity. Smith v. Young, 134 Miss. 738, 99 So. 370, 1924 Miss. LEXIS 303 (Miss. 1924).

It was the purpose of the statute in requiring two witnesses to attest the will to have more than the mere signatures of two persons to the will. Maxwell v. Lake, 127 Miss. 107, 88 So. 326, 1921 Miss. LEXIS 193 (Miss. 1921).

It was the duty of the attesting witnesses, under the statute, to observe and see that the will was executed by the testator, and that he had capacity to execute the will. Maxwell v. Lake, 127 Miss. 107, 88 So. 326, 1921 Miss. LEXIS 193 (Miss. 1921).

"Attested" is broader than "subscribed." Maxwell v. Lake, 127 Miss. 107, 88 So. 326, 1921 Miss. LEXIS 193 (Miss. 1921).

Word "credible" is synonymous with "competent." Swanzy v. Kolb, 94 Miss. 10, 46 So. 549, 1908 Miss. LEXIS 2 (Miss. 1908).

16. —Validity; particular circumstances.

Trial court erred by finding in a motion for summary judgment that a purported holographic will of the decedent and a subsequent typewritten will of the decedent were not to be probated because the proponent of the wills created a genuine issue as to whether the wills had been signed and executed by the decedent through the statement by the proponent's former spouse in an affidavit that the spouse had witnessed the decedent sign the wills. Although the proponent was a named beneficiary in the wills, the spouse was not a named beneficiary. Yoakum v. Smith (In re Estate of Yoakum), 311 So. 3d 686, 2021 Miss. App. LEXIS 67 (Miss. Ct. App. 2021).

Chancellor erred in upholding a lease assignment that purported to convey the lessor's rights to the assignee upon the lessor's death because while the lease agreement acted as a testamentary document, it did not constitute a valid will and failed to validly assign the lessor's rights to the assignee where there was no indication that the lessor was of "sound and disposing mind," that the document represented a will, or that the lessees met any of the statutory requirements of attesting witnesses. Estate of Greer v. Ball, 218 So. 3d 1196, 2016 Miss. App. LEXIS 259 (Miss. Ct. App. 2016).

Chancery court properly determined that a decedent's will was invalid because the will was only signed by the decedent and a notary; therefore, the will lacked the proper attestation and as a result the decedent died intestate. Lockhart (In re Estate of Thomas) v. Wilson, 962 So. 2d 141, 2007 Miss. App. LEXIS 500 (Miss. Ct. App. 2007).

In a will contest, it was error for the trial court to permit the jury to take into consideration the suspension of a license to practice law for mental aberration of the attesting witness, which occurred a little over 4 years subsequent to the execution of the last will and testament, since that matter of itself would not determine the competence of the witness, and competence, not credibility, is the test. Estate of Briscoe v. Briscoe, 255 So. 2d 313, 1971 Miss. LEXIS 1284 (Miss. 1971).

Although under Code 1942, § 498 the testimony of only one living witness is sufficient to establish a will's proper execution, proof of two signatures of witnesses is required to prove due execution where the witnesses to a will are deceased. Estate of Willis v. Willis, 207 So. 2d 348, 1968 Miss. LEXIS 1609 (Miss. 1968).

The affidavits of two subscribing witnesses to a will were sufficient for the probate thereof in common form. Austin v. Patrick, 179 Miss. 718, 176 So. 714, 1937 Miss. LEXIS 74 (Miss. 1937).

Will was sufficiently attested where one of two witnesses took testator's acknowledgment instead of signing as a witness. Bolton v. Bolton, 107 Miss. 84, 64 So. 967, 1914 Miss. LEXIS 53 (Miss. 1914).

Will was sufficiently attested where one witness signed on separate sheet of paper which was folded together with will. Bolton v. Bolton, 107 Miss. 84, 64 So. 967, 1914 Miss. LEXIS 53 (Miss. 1914).

Devise to witness is void, but witness is competent to establish residue of will. Swanzy v. Kolb, 94 Miss. 10, 46 So. 549, 1908 Miss. LEXIS 2 (Miss. 1908).

17. —Presence of witnesses.

Where one of the witnesses to a will, a non-lawyer, helped prepare the will, had known the testator for more than 25 years, was fully aware of the testator's motives for disinheriting all but one of his children, and could testify as to the testator's capacity for executing the will, and the second witness testified that the testator seemed fully capable of executing the will, it was properly held valid; that the will was prepared by a non-lawyer did not invalidate it. Hensley v. Harris, 870 So. 2d 1227, 2003 Miss. App. LEXIS 791 (Miss. Ct. App. 2003), cert. denied, 870 So. 2d 666, 2004 Miss. LEXIS 419 (Miss. 2004).

The attestation of a will that occurred outside the testator's physical presence was invalid, notwithstanding that the attesting witness was the draftsman of the will and that his long time familiarity with the testator and his handwriting provided him with the assurances that the document was indeed the will of the testator. McDevitt v. McDevitt (In re Estate of McDevitt), 755 So. 2d 1125, 1999 Miss. App. LEXIS 273 (Miss. Ct. App. 1999).

A purported will did not meet the statutory requirements of an attested instrument where the document, which was entirely handwritten, only contained decedent's purported signature in the opening paragraph, where none of the three witnesses to the document saw, read, or heard the entire document, where no page of the document except the last was signed by a witness, and where no evidence showed that any witness had observed decedent affix her signature on the document or had heard her acknowledge that she had at any time signed it. Jay v. Thrash, 380 So. 2d 1273 (Miss. 1980).

A telephone conversation between the testator and one of the witnesses to the will, in which the witness first asked the testator whether he had signed the will and received an affirmative reply prior to the witness' attestation, did not constitute the necessary "presence" of the witness to the signing for purposes of validating the will; the purpose of signing in the presence of the testator is to allow the testator to know that the witnesses are attesting the testator's will and not another document, that the witnesses will know the same, that imposition or fraud is thus prevented by precluding the substitution of another will in place of that signed by the testator, and that the witnesses will be reasonably satisfied that the testator is of sound and disposing mind and capable of making a will. In re Will of Jefferson, 349 So. 2d 1032, 1977 Miss. LEXIS 2174 (Miss. 1977).

A will was not executed within the requirements of this section [Code 1942, § 657] where it appeared that after the witnesses, who were in a different room, had signed the instrument, and the testatrix's name had been signed thereto, it was then carried into the room of the testatrix who merely touched the pen. Kelker v. Jordan, 228 Miss. 847, 89 So. 2d 858, 1956 Miss. LEXIS 573 (Miss. 1956).

Where the testator signed his will at the end and exhibited it to two witnesses telling them it was his will and requesting them to sign, and one of the witnesses read the will in the presence of the testator and the other witness after which both witnesses attached their signatures in testator's presence, the will was valid. Phifer v. McCarter, 222 Miss. 415, 76 So. 2d 258, 1954 Miss. LEXIS 659 (Miss. 1954).

The necessity of two witnesses in the making of a will has no application to proof of a promise to make a will. Boggan v. Scruggs, 200 Miss. 747, 29 So. 2d 86, 1947 Miss. LEXIS 358 (Miss. 1947), overruled, Talbert v. Ellzey, 203 Miss. 612, 35 So. 2d 628, 1948 Miss. LEXIS 313 (Miss. 1948).

Subscribing witnesses to wills are not required to sign in the presence of each other. Austin v. Patrick, 179 Miss. 718, 176 So. 714, 1937 Miss. LEXIS 74 (Miss. 1937).

Subscribing witnesses to wills are not required to see the testator sign the will, but is enough if testator produces the will, declares it to be his will, and states that signature appended thereto is his and that he wrote it. Austin v. Patrick, 179 Miss. 718, 176 So. 714, 1937 Miss. LEXIS 74 (Miss. 1937).

Evidence of subscribing witness that testatrix told him that instrument was her will, that she had signed it and wanted him to sign it as a witness, and that he did so in her presence, and testimony of other witness who did not sign in presence of other subscribing witness and was not present when other witness signed, that testatrix told him instrument was her will and requested him to sign it as a witness, was sufficient to authorize admission of will to probate in solemn form. Austin v. Patrick, 179 Miss. 718, 176 So. 714, 1937 Miss. LEXIS 74 (Miss. 1937).

A request to sign a will as a witness, made in the presence of the testator by one intrusted with the preparation of the will, is equivalent to a request by the testator, and it is sufficient that enough is said and done in the presence and with the knowledge of the testator to make the witnesses understand that he desires them to know that the paper is his will, and that they are to be the witnesses thereto. Green v. Pearson, 145 Miss. 23, 110 So. 862, 1927 Miss. LEXIS 130 (Miss. 1927).

Where a testator did not sign his will in the presence of one of the witnesses, did not declare his signature, did not identify the paper or signature, and did not declare it to be his will, it was improper to instruct the jury that the will as duly and legally executed. Maxwell v. Lake, 127 Miss. 107, 88 So. 326, 1921 Miss. LEXIS 193 (Miss. 1921).

Will duly attested by two witnesses is valid although third witness signed when other two were not present. Gore v. Ligon, 105 Miss. 652, 63 So. 188, 1913 Miss. LEXIS 245 (Miss. 1913).

Attestation held sufficient where testator directed another to sign his name for him to the will and then sign it as witness, and afterwards exhibited it to two other persons stating it was his will and having them sign as witnesses. Miller v. Miller, 96 Miss. 526, 51 So. 210, 1910 Miss. LEXIS 164 (Miss. 1910).

18. Particular instruments as valid testamentary instruments.

Will was properly found to be invalid because, while stating an intent to distribute the testator's property, the will did not designate a beneficiary. Swilley v. Estate of LeBlanc (In re Estate of Regan), 179 So. 3d 1155, 2015 Miss. App. LEXIS 179 (Miss. Ct. App.), cert. denied, 179 So. 3d 1137, 2015 Miss. LEXIS 577 (Miss. 2015).

The words on a certificate of deposit "payable on death" were testamentary in character and constituted an attempt to make a negotiable instrument a will, thus requiring compliance with this section. In re Collier, 381 So. 2d 1338, 1980 Miss. LEXIS 1933 (Miss. 1980).

An instrument executed in the manner required by the statute with the express intent of vesting the testator's property upon his death constitutes a valid testamentary disposition, no matter what name the testator may give it. Peebles v. Rodgers, 211 Miss. 8, 50 So. 2d 632, 1951 Miss. LEXIS 326 (Miss. 1951).

Provision in an instrument which intends to convey all the lands the grantor owns but the grantor to live on and control the land during his life time and on his death the instrument to take effect and the title to vest in the grantee, was testamentary in character. Peebles v. Rodgers, 211 Miss. 8, 50 So. 2d 632, 1951 Miss. LEXIS 326 (Miss. 1951).

A letter clearly indicating that its writer had her death in mind when writing it, and intended by it to make the gifts set forth therein effective when that event should occur, constituted all that is necessary to a will. In re Mey's Estate, 200 Miss. 548, 28 So. 2d 125, 1946 Miss. LEXIS 321 (Miss. 1946).

An instrument in the form of a deed which provided that the grantors were to retain possession, control and occupancy of the lands during their lifetime and then vest in the purported grantee, "but not until the death of both grantors herein, does the title pass," was testamentary in character since it did not meet the requirement of a deed that it must convey some estate effective upon delivery. Coulter v. Carter, 200 Miss. 135, 26 So. 2d 344, 1946 Miss. LEXIS 274 (Miss. 1946).

Test to determine whether instrument is will or deed set forth; instrument will operate according to legal effect regardless of denomination given by maker. Knight v. Knight, 133 Miss. 74, 97 So. 481, 1923 Miss. LEXIS 112 (Miss. 1923).

Letter not containing dispositive word is not a will, in absence of evidence that it was intended to be testamentary. Sullivan v. Jones, 130 Miss. 101, 93 So. 353, 1922 Miss. LEXIS 177 (Miss. 1922).

Letter stating writer held property to protect interest of addressee, that he would later give her a deed to it, and that it was to go to her at his death, held declaration of trust and not a will. Morgan v. Hayward, 115 Miss. 354, 76 So. 262, 1917 Miss. LEXIS 206 (Miss. 1917).

Instrument in form of deed to take effect only after grantor's death, held testamentary and not a deed. Simpson v. McGee, 112 Miss. 344, 73 So. 55, 1916 Miss. LEXIS 117 (Miss. 1916).

Letter of testatrix stating disposition to be made of her property unless she made another and more formal will, fully written and subscribed by her, was properly admitted to probate. Hewes v. Hewes, 110 Miss. 826, 71 So. 4, 1916 Miss. LEXIS 211 (Miss. 1916).

An instrument, executed by plaintiffs' father and mother, providing that in consideration of five dollars and parental love and affection, the parents sold and granted to plaintiffs, as joint owners, certain lands in fee simple, with a reservation of possession and control in the grantors so long as they should live, was not a will, but a deed, with the reservation of a life estate to the grantors. Myers v. Viverett, 110 Miss. 334, 70 So. 449, 1915 Miss. LEXIS 45 (Miss. 1915).

Instrument executed by decedent expressing her wish as to devolution of her property in case her husband survived her was not subject to probate as her will on her surviving her husband. Du Sauzay v. Du Sauzay, 105 Miss. 839, 63 So. 273, 1913 Miss. LEXIS 268 (Miss. 1913).

Letter written by decedent to brother stating how he wished his property disposed of is a valid will, if he did not deliver it but kept it and treated it as his will. Prather v. Prather, 97 Miss. 311, 52 So. 449, 1910 Miss. LEXIS 232 (Miss. 1910).

Parol agreement by two sisters that survivor should have certain personal property is not testamentary. Marshall v. Stratton, 96 Miss. 465, 51 So. 132, 1910 Miss. LEXIS 161 (Miss. 1910).

19. Holographic wills.

A purported holographic will did not comport with the execution requirements of § 91-5-1 and was therefore invalid, where the will was a one-page document with writing on the front and back, the testator's name appeared in the first line of the will but did not appear again, and the will was not signed at the end. Amyotte v. Hollingsworth, 585 So. 2d 731 (Miss. 1991).

There is no legal requirement that signature "subscribing" holographic will must be placed on the same sheet of paper as the dispositive provisions of the will, so long as the signature is at the conclusion of the will; and the part of the will containing the signature may be mechanically attached to the other part of the will so that it may be identified as a part thereof. Lyle v. Shannon, 228 So. 2d 594 (Miss. 1969).

The intent of one to make a will, insofar as probate of a holographic will is concerned, is immaterial; for the question is whether the will actually is executed in accordance with the statute of the state. Boyles Coffee Co. v. Anderson, 218 So. 2d 843, 1969 Miss. LEXIS 1621 (Miss. 1969).

With respect to holographic wills, this section [Code 1942, § 657] has been construed to mean that such a will must be signed at the end of a document, testamentary in character, which shows on its face that the testamentary purpose therein expressed is completed, that nothing which follows the signature may be considered, and if the writing does not meet the requirements of this section the intent of the writer is immaterial. In re Estate of King, 203 So. 2d 581, 1967 Miss. LEXIS 1383 (Miss. 1967).

Holographic wills must be subscribed by testator, or another for him, and nothing can be effective which appears after and beneath such signature. In re George's Estate, 208 Miss. 734, 45 So. 2d 571, 1950 Miss. LEXIS 292 (Miss. 1950).

Unsigned postscript cannot be treated as part of dispositive provisions of letter offered as holographic will. In re George's Estate, 208 Miss. 734, 45 So. 2d 571, 1950 Miss. LEXIS 292 (Miss. 1950).

Letter constituting valid holographic will must be of testamentary character, wholly written, dated, and signed by testator. Sullivan v. Jones, 130 Miss. 101, 93 So. 353, 1922 Miss. LEXIS 177 (Miss. 1922).

Holographic will must be both written and subscribed by testator. Better v. Hirsch, 115 Miss. 614, 76 So. 555, 1917 Miss. LEXIS 239 (Miss. 1917).

A letter testatmentary in its character wholly written, dated and signed by the testator is a valid holographic will although it contains a request that the person to whom it was addressed should keep its contents private. Buffington v. Thomas, 84 Miss. 157, 36 So. 1039, 1904 Miss. LEXIS 84 (Miss. 1904).

20. —Date requirement.

An otherwise valid holographic will is not invalid for lack of a date, there being nothing in the statute which requires that a holographic will be dated. Vaughn v. General Cable Corp., 248 So. 2d 798, 1971 Miss. LEXIS 1489 (Miss. 1971).

21. —Reference to extrinsic documents.

Extrinsic document, by reference made part of will wholly written by testator, must also be so written, otherwise the whole will would not be in the handwriting of testator. Hewes v. Hewes, 110 Miss. 826, 71 So. 4, 1916 Miss. LEXIS 211 (Miss. 1916).

22. —Construction.

In giving legal effect to an instrument prepared by a lay person, the court should endeavor to ascertain what the words contained in it meant to the author, not simply what they could connote to a lawyer. Thus, where a holographic will provided that if the testator preceded his wife in death "all of my earthly possessions be received by her," the use of the ordinary words "possessions" and "receive," with no further qualification or restriction, indicated that the testator intended for his wife to receive and own everything he possessed and owned. In re Estate of Dedeaux, 584 So. 2d 419, 1991 Miss. LEXIS 462 (Miss. 1991).

In a will contest, requiring construction of a holographic will, in view of evidence that the testatrix' use and enjoyment of land was not restricted and that there was no fence defining a "yard" in which a dwelling house and out buildings were located, and the testatrix had been accustomed to referring to the entire place by the term "home", her bequest of one-half the value of the "home" was not a bequest of one-half the value of the house and "yard" but of one-half the value of the entire 58.4 acres of land on which the house was situated. Carlisle v. Estate of Carlisle, 252 So. 2d 894, 1971 Miss. LEXIS 1208 (Miss. 1971).

In construing a will, consideration must be given to all the provisions of the instrument and every part thereof taken together, rather than to any particular clause, sentence or form of words, and this is particularly true with respect to a holographic will since the words and terms are those of the testator who is also the writer and the will is not therefore as subject to mistake through misunderstanding as might be the case where the instrument is drawn by one other than the testator. Carlisle v. Estate of Carlisle, 252 So. 2d 894, 1971 Miss. LEXIS 1208 (Miss. 1971).

Fact that wife's holographic will referred to a request of her husband was no more than an explanation as to her reason for devising the property as she did, and was not an expression of the testamentary intent of the husband. Carlisle v. Carlisle, 233 So. 2d 803, 1970 Miss. LEXIS 1680 (Miss. 1970).

A holographic will written and subscribed by the decedent which, after making certain specific bequests concluded with the statement, "I will finish this later," was properly admitted to probate, for the testamentary purpose as far as expressed in the will was complete. Maines v. Davis, 227 So. 2d 844, 1969 Miss. LEXIS 1372 (Miss. 1969).

The intent of one to make a will, insofar as probate of a holographic will is concerned, is immaterial; for the question is whether the will actually is executed in accordance with the statute of the state. Boyles Coffee Co. v. Anderson, 218 So. 2d 843, 1969 Miss. LEXIS 1621 (Miss. 1969).

23. —Particular instruments as valid holographic wills.

A page of a scratch pad on which appeared, in the decedent's handwriting: "Madge Do what should be done and complete my work. I will all to you." , followed by the decedent's signature and the abbreviation for Thursday, constituted a valid holographic will, though undated. Vaughn v. General Cable Corp., 248 So. 2d 798, 1971 Miss. LEXIS 1489 (Miss. 1971).

A holographic will written and subscribed by the decedent which, after making certain specific bequests concluded with the statement, "I will finish this later," was properly admitted to probate, for the testamentary purpose as far as expressed in the will was complete. Maines v. Davis, 227 So. 2d 844, 1969 Miss. LEXIS 1372 (Miss. 1969).

Letter written wholly in sender's handwriting expressing desire to give addressee interest in plantation and saying, "I want you to begin fixing things that you may get the rent for 1947," and expressing intent to enter upon negotiations for purchase of four lots, is not testamentary or dispositive, but merely expresses desire with purpose to later effectuate it, and cannot be probated as holographic will of writer. In re George's Estate, 208 Miss. 734, 45 So. 2d 571, 1950 Miss. LEXIS 292 (Miss. 1950).

A simple statement written by the signer that she gives everything she owns without bond to her sister named, which writing is kept in the signer's possession until the time of her death, is effective as a holographic will, even though the day of the month when executed is not specified by the signer who could not possibly have attained her majority during the particular month of the year shown by the writing. Estes v. Estes, 200 Miss. 541, 27 So. 2d 854, 1946 Miss. LEXIS 320 (Miss. 1946).

Instrument entirely in handwriting of deceased, with caption consisting of the name of deceased followed by the words "writing this," where no signature, date or other writing appeared underneath the last paragraph of the instrument, was inadmissible to probate as a holographic will, since the instrument was not subscribed to within the meaning of this section [Code 1942, § 657]. Words appearing at top and as caption were mere words of description and identification of the person writing the instrument and did not constitute a signature in execution of the instrument. Baker v. Baker's Estate, 199 Miss. 388, 24 So. 2d 841, 1946 Miss. LEXIS 208 (Miss. 1946).

A letter testatmentary in its character wholly written, dated and signed by the testator is a valid holographic will although it contains a request that the person to whom it was addressed should keep its contents private. Buffington v. Thomas, 84 Miss. 157, 36 So. 1039, 1904 Miss. LEXIS 84 (Miss. 1904).

An holographic will complete and perfect in itself is not invalidated because the words "my will", a mere caption, were written above it on the same sheet of paper by the hand of another than the testator. Baker v. Brown, 83 Miss. 793, 36 So. 539, 1903 Miss. LEXIS 97 (Miss. 1903).

24. Probate; requirement, generally.

Will ineffectual as instrument of title until probated. Virginia Trust Co. v. Buford, 123 Miss. 572, 86 So. 356, 1920 Miss. LEXIS 60 (Miss. 1920).

25. —Practice and procedure.

In will contest where more than one ground is asserted challenging validity of will, court should require jury to return special verdict as authorized by Mississippi Rule of Civil Procedure 49 to enable reviewing court to determine true verdict of jury and render opinion in accord. Street Medical Found. v. Watts, 475 So. 2d 819 (Miss. 1985).

Giving of jury instruction addressing issue of which nonprofit corporation is proper beneficiary under will is reversible error where primary issue presented is testatmentary capacity of testatrix, particularly where instruction is peremptory in obligating jury to find for contestant on uncontradicted facts. Matter of Street Medical Found. v. Watts, 475 So. 2d 819 (Miss. 1985).

The trial court in an action contesting a will properly refused jury instructions offered by the will proponents, where one was a "boiler plate" instruction purporting to set forth the law on who might make a will, which contained mere abstract principles of law, did not apply to the specific facts of the case, and was erroneous in that it failed to take into account § 91-5-1, and where the other instruction correctly recited the law but did not apply to the specific facts of the case. Estate of Lawler

v. Weston, 451 So. 2d 739, 1984 Miss. LEXIS 1757 (Miss. 1984).

Where contestants attempt to show subsequent will was valid, instruction that if contested will was not believed by jury to be the true and last will beyond a reasonable doubt, it should be held invalid, is erroneous. Williams v. Morehead, 116 Miss. 653, 77 So. 658, 1917 Miss. LEXIS 354 (Miss. 1917).

26. —Evidence.

A person contesting a will should be allowed to examine the subscribing witnesses to the will as to all matters relevant to the will's execution and to inquire into surrounding facts and circumstances so that the court may determine if the will was properly signed and attested, if attestation be required, and if the testator was mentally competent and free of undue influence. Chapman v. Chapman, 264 So. 2d 395, 1972 Miss. LEXIS 1357 (Miss. 1972).

Presumption against intestacy is only a presumption which must yield to facts, and cannot be applied to change or write new will so as to dispose of property under a will which makes no such disposition. Williams v. Gooch, 208 Miss. 223, 44 So. 2d 57, 1950 Miss. LEXIS 241 (Miss. 1950).

In proceeding by residuary legatee to recover his share of estate, introduction in evidence of proceedings before chancery clerk in vacation admitting will to probate in common form makes out prima facie case of validity of will. Rice v. McMullen, 207 Miss. 706, 43 So. 2d 195, 1949 Miss. LEXIS 382 (Miss. 1949).

Lay witnesses are competent to testify on issue of capacity of testator to make will on date of its alleged execution where they first give facts upon which their opinions are based. Blalock v. Magee, 205 Miss. 209, 38 So. 2d 708, 1949 Miss. LEXIS 426 (Miss. 1949).

Notwithstanding transcript, in view of entire testimony, witness held not to have said will was typewritten. Watkins v. Watkins, 142 Miss. 210, 106 So. 753, 1926 Miss. LEXIS 49 (Miss. 1926).

Testimony of subscribing witness best evidence of execution. Smith v. Young, 134 Miss. 738, 99 So. 370, 1924 Miss. LEXIS 303 (Miss. 1924).

Undue influence may be made out by circumstantial evidence. Jamison v. Jamison, 96 Miss. 288, 51 So. 130, 1909 Miss. LEXIS 56 (Miss. 1909).

27. — —Admissibility.

Where testatrix, who had a daughter named Rosalind Gwin Hutton Johnson and a granddaughter named Rosalind Gwin Hutton, devised land to "Rosalind Gwin Hutton," the will was ambiguous as to the identity of the devisee, and evidence extrinsic to the will was admissible to identify the intended devisee. Hutton v. Hutton, 233 Miss. 458, 102 So. 2d 424, 1958 Miss. LEXIS 404 (Miss. 1958).

In contest proceeding arising out of offer of letter for probate as holographic will of writer, later unsigned will prepared at writer's suggestion, letter with reference to unsigned will, circumstances surrounding preparation of documents, their contents, and action of parties with reference thereto are competent evidence upon question of whether writer intended letter as will and so considered it, and whether, in legal effect, it was will. In re George's Estate, 208 Miss. 734, 45 So. 2d 571, 1950 Miss. LEXIS 292 (Miss. 1950).

In will contest, admission in evidence of opinions of lay witnesses as to mental incapacity of testatrix to make will on date of its alleged execution followed by statement by witnesses of facts or incidents in connection with their acquaintance, association and experience with testatrix on which opinion is based is not reversible error in absence of objection interposed by proponents to expression of these opinions by witnesses for contestants on ground that they had not previously stated facts upon which their opinions were given, objection on ground that profferred testimony involved opinion of lay witness being insufficient. Blalock v. Magee, 205 Miss. 209, 38 So. 2d 708, 1949 Miss. LEXIS 426 (Miss. 1949).

Parol evidence to effect that deceased stated that she had made her will was inadmissible on question whether alleged holographic will was intended to be and in fact was "subscribed" within the meaning of this section [Code 1942, § 657], even though parol evidence generally is competent to show whether an instrument was intended to be of testamentary character where its meaning in that behalf is not clearly shown on the face thereof, since there was no issue as to whether the instrument was testamentary in character. Baker v. Baker's Estate, 199 Miss. 388, 24 So. 2d 841, 1946 Miss. LEXIS 208 (Miss. 1946).

Evidence as to how testator acquired certain personal property about 23 years prior to making of his will is inadmissible, as too remote, on issue of testamentary capacity, especially where it is not shown that any of this property was in existence at time of testator's death. Norman v. Norman, 196 Miss. 597, 18 So. 2d 130, 1944 Miss. LEXIS 239 (Miss. 1944).

Error by trial court in excluding evidence as to timber cruise on testator's lands, in suit contesting will on grounds of undue influence and lack of testamentary capacity, did not constitute reversible error in view of other evidence admitted showing value and extent of testator's estate. Norman v. Norman, 196 Miss. 597, 18 So. 2d 130, 1944 Miss. LEXIS 239 (Miss. 1944).

Exclusion of evidence of attorney drawing will held harmless in will contest where proponents granted peremptory instruction. Isom v. Canedy, 128 Miss. 64, 88 So. 485, 1921 Miss. LEXIS 293 (Miss. 1921).

Opinion evidence that testatrix was under influence of a legatee is inadmissible. Scally v. Wardlaw, 123 Miss. 857, 86 So. 625, 1920 Miss. LEXIS 89 (Miss. 1920).

Declarations of sole beneficiary of a will shortly after testatrix's death held incompetent in will contest on ground of forgery, he being a witness in his own behalf and testifying he wrote the will. Liles v. May, 105 Miss. 807, 63 So. 217, 1913 Miss. LEXIS 252 (Miss. 1913).

Whether writing was intended as will may be shown by parol. Prather v. Prather, 97 Miss. 311, 52 So. 449, 1910 Miss. LEXIS 232 (Miss. 1910).

Declarations of testator that he would make no will held incompetent. Miller v. Miller, 96 Miss. 526, 51 So. 210, 1910 Miss. LEXIS 164 (Miss. 1910).

28. —Burden of proof.

In will contest on ground of lack of testamentary capacity and existence of undue influence, there is but a single issue-will or no will, and burden is on proponent throughout. Blalock v. Magee, 205 Miss. 209, 38 So. 2d 708, 1949 Miss. LEXIS 426 (Miss. 1949).

Burden of proof on proponents of will as to capacity and undue influence, but they make out prima facie case by introduction of record of probate in common form. Gathings v. Howard, 122 Miss. 355, 84 So. 240, 1920 Miss. LEXIS 439 (Miss. 1920).

Proponents of will have burden of giving reasonable explanation of unnatural character of will. Jamison v. Jamison, 96 Miss. 288, 51 So. 130, 1909 Miss. LEXIS 56 (Miss. 1909).

Where on an issue devisavit vel non the question is whether the testator was sane or insane the contestants are not required to prove his sanity beyond all reasonable doubt. King v. Rowan, 82 Miss. 1, 34 So. 325, 1903 Miss. LEXIS 158 (Miss. 1903).

RESEARCH REFERENCES

ALR.

Incorporation in will of extrinsic document not in existence at date of will. 3 A.L.R.2d 682.

Remedies during promisor's lifetime on contract to convey or will property at death in consideration of support or services. 7 A.L.R.2d 1166.

Power and capacity of bank to take devise or bequest. 8 A.L.R.2d 454.

Right of an administrator with the will annexed, or trustee other than the person named in the will as such, to execute power of sale conferred by will. 9 A.L.R.2d 1324.

Taking per stripes or per capita under will. 13 A.L.R.2d 1023.

Devisability of possibility of reverter, or of right of re-entry for breach of condition subsequent. 16 A.L.R.2d 1246.

Enlarged interest acquired by testator after execution of will as passing by devise or bequest. 18 A.L.R.2d 519.

Nature of remainders created by will giving life estate to spouse of testator, with remainder to be divided equally between testator's heirs and spouse's heirs. 19 A.L.R.2d 371.

Place of signature of holographic wills. 19 A.L.R.2d 926.

Codicil as validating will or codicil which was invalid or inoperative at time of its purported execution. 21 A.L.R.2d 821.

Effect of testator's attempted physical alteration of will after execution. 24 A.L.R.2d 514.

Effectiveness of nuncupative will where essential witness thereto is beneficiary. 28 A.L.R.2d 796.

Term "next of kin" used in will, as referring to those who would take in cases of intestacy under distribution statutes, or to nearest blood relatives of designated person or persons. 32 A.L.R.2d 296.

Validity and effect of promise not to make a will. 32 A.L.R.2d 370.

What passes under term "possessions" in will. 33 A.L.R.2d 550.

Codicil as reviving revoked will or codicil. 33 A.L.R.2d 922.

Interlineations and changes appearing on face of will. 34 A.L.R.2d 619.

Validity and effect of provision in will regulating or controlling beneficiary's residence. 35 A.L.R.2d 387.

Validity of will written on disconnected sheets. 38 A.L.R.2d 477.

Letter as a will or codicil. 40 A.L.R.2d 698.

"Attestation" or "witnessing" of will, required by statute, as including witnesses' subscription. 45 A.L.R.2d 1365.

What passes under term "personal estate" in will. 53 A.L.R.2d 1059.

Failure of attesting witness to write or state place of residence as affecting will. 55 A.L.R.2d 1053.

Sufficiency of publication of will. 60 A.L.R.2d 124.

Competency of named executor as subscribing witness to will. 74 A.L.R.2d 283.

Sufficiency, as to form, of signature to holographic will. 75 A.L.R.2d 895.

Effect of guardianship of adult on testamentary capacity. 89 A.L.R.2d 1120.

Requirement that holographic will be entirely in handwriting of testator as affected by appearance printed of matter or handwriting of another. 89 A.L.R.2d 1198.

Validity of will as affected by fact that witnesses signed before testator. 91 A.L.R.2d 737.

Validity of a will signed by testator with the assistance of another. 98 A.L.R.2d 824.

Validity of will signed by testator's mark, stamp, or symbol, or partial or abbreviated signature. 98 A.L.R.2d 841.

Sufficiency of testator's acknowledgment of signature from his conduct and the surrounding circumstances. 7 A.L.R.3d 317.

Wills: Testator's illiteracy or lack of knowledge of language in which will is written as affecting its validity. 37 A.L.R.3d 889.

Effect of residuary clause to pass property acquired by testator's estate after his death. 39 A.L.R.3d 1390.

Wills: when is will signed at "end" or "foot" as required by statute. 44 A.L.R.3d 701.

Change in stock or corporate structure, or split, or substitution of stock of corporation, as affecting bequest of stock. 46 A.L.R.3d 7.

Effect upon testamentary nature of document of expression therein of intention to make more formal will, further disposition of property, or the like. 46 A.L.R.3d 938.

Restrictions on transfer of corporate stock as applicable to testamentary dispositions thereof. 61 A.L.R.3d 1090.

Construction of reference in will to statute where pertinent provisions of statute are subsequently changed by amendment or repeal. 63 A.L.R.3d 603.

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Ademption of legacy of business or interest therein. 65 A.L.R.3d 541.

Measure of damages for breach of contract to will property. 65 A.L.R.3d 632.

Wills: separate gifts to same person in same or substantially same amounts, made in separate wills or codicils, as cumulative or substitutionary. 65 A.L.R.3d 1325.

Necessity that attesting witness realize instrument was intended as will. 71 A.L.R.3d 877.

Existence of illicit or unlawful relation between testator and beneficiary as evidence of undue influence. 76 A.L.R.3d 743.

Disposition of insurance proceeds of personal property specifically bequeathed or devised. 82 A.L.R.3d 1261.

Wills: Effect of gift to be disposed of "as already agreed" upon or the like. 85 A.L.R.3d 1181.

Sufficiency of evidence that will was not accessible to testator for destruction, in proceeding to establish lost will. 86 A.L.R.3d 980.

Wills: condition that devisee or legatee shall renounce, embrace, or adhere to specified religious faith. 89 A.L.R.3d 984.

Effect of testamentary gift to child conditioned upon specified arrangements for parental control. 11 A.L.R.4th 940.

Validity of testamentary exercise of power of appointment by donee sane when will was executed but insane thereafter. 19 A.L.R.4th 1002.

Liability in damages for interference with expected inheritance or gift. 22 A.L.R.4th 1229.

Word "child" or "children" in will as including grandchild or grandchildren. 30 A.L.R.4th 319.

Requirement that holographic will, or its material provisions, be entirely in testator's handwriting as affected by appearance of some printed or written matter not in testator's handwriting. 37 A.L.R.4th 528.

Sufficiency of evidence to support grant of summary judgment in will probate or contest proceedings. 53 A.L.R.4th 561.

Testamentary direction to devisee to pay stated sum of money to third party as creating charge or condition or as imposing personal liability on devisee for nonpayment. 54 A.L.R.4th 1098.

Proper execution of self-proving affidavit as validating or otherwise curing defect in execution of will itself. 1 A.L.R.5th 965.

Alzheimer's disease as affecting testamentary capacity. 47 A.L.R.5th 523.

Am. Jur.

79 Am. Jur. 2d, Wills § 47 et seq.

20A Am. Jur. Legal Forms 2d, Wills § 266:1 et seq.

9 Am. Jur. Trials, Will Contests § 15 et seq.

1 Am. Jur. Proof of Facts 2d, Mistake in the Inducement of Wills, § 5 et seq. (proof of mistake in the inducement).

2 Am. Jur. Proof of Facts 2d, Mistake in Naming or Designating Beneficiary in Will, § 6 et seq. (proof of testator's mistake in designating beneficiary in will).

6 Am. Jur. Proof of Facts 2d, Intentional Omission of Child from Will, § 8 et seq. (proof of intentional omission of child from will).

18 Am. Jur. Proof of Facts 2d 1, Mentally Disordered Testator's Execution of Will During Lucid Interval.

36 Am. Jur. Proof of Facts 2d 109, Undue Influence in Execution of Will.

40 Am. Jur. Proof of Facts 2d 339, Lack of Testamentary Capacity by Reason of Insane Delusion.

17 Am. Jur. Proof of Facts 3d 219, Alzheimer's and Multi-Infarct Dementia – Incapacity to Execute Will.

19 Am. Jur. Proof of Facts 3d 335, AIDS Dementia – Incapacity to Execute Will.

CJS.

95 C.J.S., Wills § 3 et seq.

Law Reviews.

1987 Mississippi Supreme Court Review, Trusts. 57 Miss. L. J. 555, August, 1987.

Weems and Evans, Mississippi law of intestate succession, wills, and administration and the proposed Mississippi Uniform Probate Code: a comparative analysis. 62 Miss. L. J. 1, Spring, 1992.

Practice References.

Bickel, Living Trusts: Forms and Practice (Matthew Bender).

Burke, Friel, and Gagliardi, Modern Estate Planning, Second Edition (Matthew Bender).

Christensen, International Estate Planning, Second Edition (Matthew Bender).

Mobley, Robinson and Hedrick, Pritchard on the Law of Wills and Administration of Estates, Seventh Edition (Michie).

Planning for Large Estates (Matthew Bender).

Schoenblum, Estate Planning Forms and Clauses (Matthew Bender).

Trust Administration and Taxation (Matthew Bender).

Estate Planning Package —LexisNexis Folio (LexisNexis).

Murphy's Will Clauses: Annotations and Forms with Tax Effects (Matthew Bender).

§ 91-5-3. Revocations.

A devise so made, or any clause thereof, shall not be revocable but by the testator or testatrix destroying, canceling, or obliterating the same, or causing it to be done in his or her presence, or by subsequent will, codicil, or declaration, in writing, made and executed. Every last will and testament made when the testator or testatrix had no child living, wherein any child he or she might have is not provided for or not mentioned, if at the time of his or her death he or she have a child, or if the testator leave his wife enceinte of a child who shall be born, shall have no effect during the life of any such after-born child and shall be void unless the child die without having been married, or without leaving issue capable of inheriting, and before he or she shall have attained twenty-one years. The estate, both real and personal, so devised shall descend to such child in the same manner as if the testator or testatrix had died intestate, subject, nevertheless, to the bequests made in the last will and testament in case of the death of such child before marriage, or without issue capable of inheriting, and under the age of twenty-one years. When a testator shall leave children born and his wife enceinte, the posthumous child or children, if unprovided for by settlement and neither provided for nor disinherited, but only pretermitted, by the last will and testament, shall succeed to the same portion of the father's estate as such child or children would have been entitled to if the father had died intestate, towards raising which portion the devisees and legatees shall contribute proportionably out of the parts devised and bequeathed to them by the same will and testament.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (15); 1857, ch. 60, art. 35; 1871, § 2389; 1880, § 1263; 1892, § 4489; 1906, § 5079; Hemingway's 1917, § 3367; 1930, § 3551; 1942, § 658.

Cross References — Limitation upon death without issue, see § 89-1-13.

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JUDICIAL DECISIONS

ANALYSIS

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1. In general.

Chancellor, on remand, had to determine whether the decedent's 2001 will was validly made and executed; if the chancellor found that the 2001 will was validly made and executed, the chancellor had to re-admit the 2001 will to probate; however, if the 2001 will was not valid, then the decedent's 1973 will had to be re-admitted to probate. Woodfield v. Woodfield (In re Estate of Woodfield), 968 So. 2d 421, 2007 Miss. LEXIS 606 (Miss. 2007).

Generally, revocation of a will can be accomplished only by physical destruction of the will or by subsequent will, codicil, or declaration, in writing, made and executed. Trotter v. Trotter, 490 So. 2d 827, 1986 Miss. LEXIS 2485 (Miss. 1986).

Mississippi Code § 91-5-3 provides the only means by which a will may be expressly revoked. Trotter v. Trotter, 490 So. 2d 827, 1986 Miss. LEXIS 2485 (Miss. 1986).

Revocation of a will is a matter of intent, except in those instances in which it occurs by operation of law from a change in circumstances subsequent to the execution of the will. McCormack v. Warren, 228 Miss. 617, 89 So. 2d 702, 1956 Miss. LEXIS 555 (Miss. 1956).

Statute pertaining to revocations of wills applies only to express revocation, and has no application to an implied revocation. Holcomb v. Holcomb, 173 Miss. 192, 159 So. 564, 1935 Miss. LEXIS 194 (Miss. 1935).

This section [Code 1942, § 658] provides sole method for expressly revoking will. Minor v. Russell, 126 Miss. 228, 88 So. 633, 1921 Miss. LEXIS 29 (Miss. 1921).

2. Requirements — mental capacity.

The execution of a will in 1982, at a time when testatrix lacked testamentary capacity, did not revoke a 1980 will. Trotter v. Trotter, 490 So. 2d 827, 1986 Miss. LEXIS 2485 (Miss. 1986).

The mental capacity required to revoke a will is the same as that required to make one. Trotter v. Trotter, 490 So. 2d 827, 1986 Miss. LEXIS 2485 (Miss. 1986).

Same degree of mentality is necessary for revocation as for making. Watkins v. Watkins, 142 Miss. 210, 106 So. 753, 1926 Miss. LEXIS 49 (Miss. 1926).

Burden of showing lack of capacity to revoke on party seeking to establish lost will. Watkins v. Watkins, 142 Miss. 210, 106 So. 753, 1926 Miss. LEXIS 49 (Miss. 1926).

3. —Intent to revoke.

In Mississippi, revocation of a duly executed will is governed by a statute, and in order to affect the revocation of a will, it is essential that it be shown in some competent manner that the testator or someone for him performed one or more of the acts specified in the statute of "destroying, cancelling, or obliterating" the will and that he did so with the intention of revoking the will. Griffith v. Movie Star of Collins, Inc., 233 So. 2d 760, 1970 Miss. LEXIS 1664 (Miss. 1970).

The intent to revoke a will is essential to the revocation by act of the testator. McCormack v. Warren, 228 Miss. 617, 89 So. 2d 702, 1956 Miss. LEXIS 555 (Miss. 1956).

In order for an act to have the effect of revoking a will the intention to revoke must clearly and unequivocally appear, so that a will is not revoked by any act of spoliation or destruction not deliberately done animo revocandi, and even where the statutory methods for revoking a will are followed by the testator, his act is ineffectual unless his intent thereby to revoke or alter the will appears. McCormack v. Warren, 228 Miss. 617, 89 So. 2d 702, 1956 Miss. LEXIS 555 (Miss. 1956).

4. By instrument of revocation.

Any instrument expressly revoking a will must meet the requirements of Mississippi Code § 91-5-1. Trotter v. Trotter, 490 So. 2d 827, 1986 Miss. LEXIS 2485 (Miss. 1986).

In a proceeding to annul probate of will and codicil and for decree that decedent died intestate, the question whether the instrument of revocation had been executed in compliance with the requirements of the statute was a question of fact to be determined according to the proof. Kennard v. Evans, 218 Miss. 176, 65 So. 2d 285, 1953 Miss. LEXIS 528 (Miss. 1953).

Where instrument intended to revoke a codicil, which disposed of all the property of testatrix, was not signed in the presence of one of the subscribing witnesses and the witness was not informed that the instrument was a revocation of the codicil and that signature appended to the instrument was that of the testatrix, and the witness learned only from other witness that testatrix had signed the instrument, the revoking instrument was not duly executed and attested. Kennard v. Evans, 218 Miss. 176, 65 So. 2d 285, 1953 Miss. LEXIS 528 (Miss. 1953).

5. By subsequent will.

Will unambiguously stated that the testator's wife was to inherit a life estate in a home, and the will further revoked all prior wills and testaments, and the antenuptial-agreement provision leaving the testator's daughter the home was a devise, or testament, that the testator intended to revoke by the subsequent will; since the antenuptial-agreement provision was revoked by the will, the provision was void and gave the daughter no claim of ownership to the home, and the will's gift of the home to the wife controlled. Dixon v. Jones (In re Will of Jones), 138 So. 3d 205, 2014 Miss. App. LEXIS 230 (Miss. Ct. App. 2014).

The execution of a will in 1982, at a time when testatrix lacked testamentary capacity, did not revoke a 1980 will. Trotter v. Trotter, 490 So. 2d 827, 1986 Miss. LEXIS 2485 (Miss. 1986).

A validly executed will with inconsistent provisions, but no express revocation clause, revokes an earlier will. Trotter v. Trotter, 490 So. 2d 827, 1986 Miss. LEXIS 2485 (Miss. 1986).

In a probate contest the court properly admitted testimony concerning a 1979 will, where such testimony was probative as to whether there was a statement of revocation of a 1961 will or whether there were inconsistent devises under the two wills. Deposit Guaranty Nat'l Bank v. Cotten, 420 So. 2d 242, 1982 Miss. LEXIS 2203 (Miss. 1982).

Revocation of a will by a subsequent instrument requires the document to be in writing, made and executed; execution in this context means signing. Therefore, a properly executed will that revoked a prior holographic will was not itself revoked by the testator's re-dating of the holographic will without re-signing that will. Ramsey v. Robinson, 346 So. 2d 379, 1977 Miss. LEXIS 2528 (Miss. 1977).

A surviving wife could by a valid, subsequent will revoke her part of a joint will earlier executed with her husband. Lane v. Woodland Hills Baptist Church, 285 So. 2d 901, 1973 Miss. LEXIS 1313 (Miss. 1973).

Provision that testatrix's daughter and her son should not inherit any of the testatrix's property until five years after the death of the daughter's husband was revoked by implication by two subsequent testamentary instruments, one of which devised to the daughter certain Louisiana property without provision for the postponement of the enjoyment thereof, the other of which directed the management by trustees of the interest of the daughter and her son, also without making any provision for the postponement of the enjoyment thereof. Martin v. Eslick, 229 Miss. 234, 90 So. 2d 635, 1956 Miss. LEXIS 604 (Miss. 1956).

Where a testator made a second will which had no revoking provisions but which was inconsistent with the first will and where the sole devisee and legatee was a witness to the will and therefore ineligible to take under it, the property passed as if the deceased had died intestate. Estate of Crawford v. Crawford, 225 Miss. 208, 82 So. 2d 823, 1955 Miss. LEXIS 574 (Miss. 1955).

Revocation may be worked by inconsistent provisions of subsequent will. Wheat v. Lacals, 139 Miss. 300, 104 So. 73, 1925 Miss. LEXIS 130 (Miss. 1925).

6. By codicil.

The rule that a codicil does not work a revocation except to the precise extent that it either expressly or by necessary implication modifies the former provisions in a will was applied to a separate paper in the testator's handwriting, signed and dated after the will, found in the same envelope as the will and referring to "my formal will." Klein v. Gaines, 203 Miss. 871, 34 So. 2d 488, 1948 Miss. LEXIS 332 (Miss. 1948).

Statute pertaining to revocations of wills held not to prevent implied revocation through codicil directing sum loaned legatee by testator to be repaid or deducted from his legacy. Holcomb v. Holcomb, 173 Miss. 192, 159 So. 564, 1935 Miss. LEXIS 194 (Miss. 1935).

Codicil to will not subscribed and attested is invalid, but does not affect validity of will. Hawkins v. Duberry, 101 Miss. 17, 57 So. 919, 1911 Miss. LEXIS 140 (Miss. 1911).

7. By destruction or obliteration.

A total or partial revocation of a will by either cancellation or obliteration is authorized by this section. In re Will of Palmer, 359 So. 2d 752, 1978 Miss. LEXIS 2267 (Miss. 1978).

In Mississippi, revocation of a duly executed will is governed by a statute, and in order to affect the revocation of a will, it is essential that it be shown in some competent manner that the testator or someone for him performed one or more of the acts specified in the statute of "destroying, cancelling, or obliterating" the will and that he did so with the intention of revoking the will. Griffith v. Movie Star of Collins, Inc., 233 So. 2d 760, 1970 Miss. LEXIS 1664 (Miss. 1970).

8. —Presumptive animo revocandi.

Will presumed destroyed animo revocandi, where traced to testator and not found after death. Watkins v. Watkins, 142 Miss. 210, 106 So. 753, 1926 Miss. LEXIS 49 (Miss. 1926).

Presumption of destruction animo revocandi is overcome by showing existence after permanent incapacity. Watkins v. Watkins, 142 Miss. 210, 106 So. 753, 1926 Miss. LEXIS 49 (Miss. 1926).

9. —Destruction of one of multiple copies.

Where a will has been executed in duplicate, the destruction by testator of that copy which he retains in his possession, with intent to revoke the will, creates a presumption that the testator intends thereby to revoke the will. Phinizee v. Alexander, 210 Miss. 196, 49 So. 2d 250, 1950 Miss. LEXIS 337 (Miss. 1950).

Where there are two copies of a will, both in possession of deceased, the presumption of law would be that by the preservation of one duplicate entire the testator did not intend a revocation of these particular devises, otherwise he would have mutilated both duplicates. Phinizee v. Alexander, 210 Miss. 196, 49 So. 2d 250, 1950 Miss. LEXIS 337 (Miss. 1950).

10. —Marginal notation.

Where credible extraneous evidence to the contrary is available, marginal notations made by a testator subsequent to the execution of his will need not necessarily constitute a revocation thereof. Wiley v. Wiley, 184 So. 2d 854, 1966 Miss. LEXIS 1483 (Miss. 1966).

11. Implied revocation; generally.

Mississippi Supreme Court declined to adopt a rule of revocation of a will by divorce and to adopt a rule that a pre-divorce will was automatically or expressly revoked by a divorce accompanied by a property settlement agreement with provisions inconsistent with the terms of the pre-divorce will; on the other hand, it did acknowledge that there may be an implied revocation of a pre-divorce will in cases where there is a divorce accompanied by a property settlement agreement with provisions inconsistent with the terms of the pre-divorce will, but any document submitted by a contestant as a subsequent declaration pursuant to Miss. Code Ann. § 91-5-3 must reveal by "clear and unequivocal" evidence the testator's intention to revoke the prior will by looking to the facts and circumstances of the particular case, the terms of the will itself, the divorce decree and the property settlement, and the conduct of the parties. Hinders v. Hinders, 828 So. 2d 1235, 2002 Miss. LEXIS 312 (Miss. 2002).

Mississippi recognizes the doctrine of revocation of wills by statute, and also, in proper cases where the facts give rise to an implied revocation, by operation of law. Rasco v. Estate of Rasco, 501 So. 2d 421, 1987 Miss. LEXIS 2274 (Miss. 1987).

The doctrine of implied revocation is carefully limited to execution of conflicting deeds or other instruments; statements of the testator that he intends to revoke the will are not enough; and, generally, such statements are inadmissible if offered to show an implied revocation. Trotter v. Trotter, 490 So. 2d 827, 1986 Miss. LEXIS 2485 (Miss. 1986).

Mississippi recognizes that a will may be impliedly revoked. Trotter v. Trotter, 490 So. 2d 827, 1986 Miss. LEXIS 2485 (Miss. 1986).

Revocation of a will is a matter of intent, except in those instances in which it occurs by operation of law from a change in circumstances subsequent to the execution of the will. McCormack v. Warren, 228 Miss. 617, 89 So. 2d 702, 1956 Miss. LEXIS 555 (Miss. 1956).

Revocation of a will is a matter of intent except where it occurs by operation of law from a change in circumstances subsequent to the execution of the will. McCormack v. Warren, 228 Miss. 617, 89 So. 2d 702, 1956 Miss. LEXIS 555 (Miss. 1956).

The doctrine of implied revocation has been carefully limited in Mississippi to the execution of conflicting deeds and other instruments. In re Stoball's Will, 211 Miss. 15, 50 So. 2d 635, 1951 Miss. LEXIS 327 (Miss. 1951).

This section [Code 1942, § 658] has no application to implied revocations by operation of law, but has reference alone to express revocations which are sought to be shown in the manner stated in the statute. Hilton v. Johnson, 194 Miss. 671, 12 So. 2d 524, 1943 Miss. LEXIS 77 (Miss. 1943).

Statute pertaining to revocations of wills applies only to express revocation, and has no application to an implied revocation. Holcomb v. Holcomb, 173 Miss. 192, 159 So. 564, 1935 Miss. LEXIS 194 (Miss. 1935).

Forcefully preventing testator from changing will held not such a change in conditions or circumstances as to amount to a revocation by implication. Minor v. Russell, 126 Miss. 228, 88 So. 633, 1921 Miss. LEXIS 29 (Miss. 1921).

Doctrine of implied revocation is always recognized in Mississippi. Caine v. Barnwell, 120 Miss. 209, 82 So. 65, 1919 Miss. LEXIS 79 (Miss. 1919).

This section [Code 1942, § 658] does not prevent implied revocation. Hoy v. Hoy, 93 Miss. 732, 48 So. 903, 1908 Miss. LEXIS 169 (Miss. 1908).

12. —Subsequent inconsistent instrument.

Decedent's will was revoked by implication because the chancellor determined that the express terms of the will and the provisions of the property-settlement agreement were inconsistent; by the express terms of the property-settlement agreement, the ex-wife forfeited her interest in the Tennessee farmland; the property-settlement agreement satisfied the requirements of this statute as a subsequent declaration to the will that revoked the decedent's predivorce will and divested the ex-wife of any interest in the farmland; and the chancellor correctly found that the parties intended to settle any and all property rights against each other and that the decedent acted by implication and intent to void the previous bequests. Chaney v. Chaney (In re Estate of Chaney), 235 So. 3d 120, 2017 Miss. App. LEXIS 278 (Miss. Ct. App. 2017), cert. denied, 2018 Miss. LEXIS 45 (Miss. Jan. 25, 2018).

A divorce accompanied by property settlement did not revoke, by implication, a previously executed will where the parties continued to live together, the divorce decree or property settlement contained no proof of intent to revoke the prior testamentary instrument, and there was no showing that the property settlement was anything more than a formality to comply with the requirements of a divorce for irreconcilable differences. Rasco v. Estate of Rasco, 501 So. 2d 421, 1987 Miss. LEXIS 2274 (Miss. 1987).

Under the provisions of Code 1942, § 658 a divorce accompanied by a property settlement made by the husband to his former wife will not serve as a revocation of a prior will providing property rights or legacies for the divorced spouse, absent proof that the testator intended that the settlement should operate as a fulfillment of support rights or as an ademption of a prior-created legacy and release by the divorced spouse of all rights in the deceased's estate. McKnight v. McKnight, 267 So. 2d 315, 1972 Miss. LEXIS 1417 (Miss. 1972).

Execution of deed to property conveying it to devisee named in prior executed will covering same property operates as pro tanto revocation of will, but only to extent of property deeded and revokes will in no other particular. Dantone v. Dantone, 205 Miss. 420, 38 So. 2d 908, 1949 Miss. LEXIS 439 (Miss. 1949).

13. Joint wills.

A surviving wife could by a valid, subsequent will revoke her part of a joint will earlier executed with her husband. Lane v. Woodland Hills Baptist Church, 285 So. 2d 901, 1973 Miss. LEXIS 1313 (Miss. 1973).

14. Pleading and practice.

Burden of showing lack of capacity to revoke on party seeking to establish lost will. Watkins v. Watkins, 142 Miss. 210, 106 So. 753, 1926 Miss. LEXIS 49 (Miss. 1926).

15. Evidence — sufficiency.

The evidence was sufficient to rebut the presumption that a testator revoked a will which was known to have been made and was kept in a locked drawer of the testator's desk, but which was not found upon his death, where the testator had a close and affectionate relationship with his daughter who was the sole beneficiary under the will, he talked to people about his will and told them that he was leaving his entire estate to his daughter, there was nothing in the record suggesting that he had changed his mind, the desk in which the will was kept was subject to entry by others, and there was evidence that someone had entered the house and the desk area after the testator died and emptied the contents of filing cabinet drawers. Berry v. Smith, 584 So. 2d 400 (Miss. 1991).

Where a testator's will was found in a lock box at his bank, to which box only he had access, and where the testator's signature, but not the signatures of the witnesses, had been cut off of the bottom of the first two pages of the will apparently with scissors, but the third page with the signature of the testator and those of the witnesses, and with an attestation certificate also signed by the witnesses, was unmarred and intact, and in all other respects the will was in its original condition, the will had not been revoked. Griffith v. Movie Star of Collins, Inc., 233 So. 2d 760, 1970 Miss. LEXIS 1664 (Miss. 1970).

Although there was no direct proof that the testatrix had destroyed the will, proof that the will was in her possession when last seen and that it could not be found after her death, together with other evidence, supported finding that complainant's proof was insufficient to establish the existence of the alleged lost or destroyed will at the time of testatrix's death, or to overcome the presumption that the will had been destroyed by the testatrix during her lifetime with the intention of revoking it. James v. Barber, 244 Miss. 234, 142 So. 2d 21, 1962 Miss. LEXIS 443 (Miss. 1962).

Although a will which had last been seen in testatrix' possession was not found after her death, evidence established that the testatrix did not revoke her will and rebutted the presumption as to revocation arising due to the fact that the will could not be found upon her death, especially since it appeared that the devisees under the will were blood relatives of the testatrix, and that one, who desired to defeat the will, had access to the place where it was kept. Adams v. Davis, 233 Miss. 228, 102 So. 2d 190, 1958 Miss. LEXIS 377 (Miss. 1958).

Under evidence that testatrix might have desired to revoke her will but later changed her mind, the chancellor did not err in holding that there had been no revocation where both copies of the instrument were found in her possession at the time of death, and even though the original or ribbon copy of the instrument, which was found in the envelope with other of the testatrix' papers, was torn from the bottom upwards by five separate tears which extended to points opposite or above the testatrix' signature, it was shown that no part of the instrument was torn off, and the signature of the testatrix and subscribing witnesses were plainly legible, there were no interlineations, erasures or cancellations on the instrument, and the carbon copy thereof was not torn. McCormack v. Warren, 228 Miss. 617, 89 So. 2d 702, 1956 Miss. LEXIS 555 (Miss. 1956).

Will presumed destroyed animo revocandi, where traced to testator and not found after death. Watkins v. Watkins, 142 Miss. 210, 106 So. 753, 1926 Miss. LEXIS 49 (Miss. 1926).

16. —Parol.

Parol testimony designed to show an implied revocation is not admissible. In re Stoball's Will, 211 Miss. 15, 50 So. 2d 635, 1951 Miss. LEXIS 327 (Miss. 1951).

The statute by its very language excludes parol testimony to change a will in any respect. Hilton v. Johnson, 194 Miss. 671, 12 So. 2d 524, 1943 Miss. LEXIS 77 (Miss. 1943).

In a widow's contest of her husband's will, leaving all his property to his brothers and sisters, parol testimony of several witnesses, offered by the widow, that the husband had stated that he wanted her to have all of his property, was properly excluded as not establishing a revocation in the manner provided by this section [Code 1942, § 658]. Hilton v. Johnson, 194 Miss. 671, 12 So. 2d 524, 1943 Miss. LEXIS 77 (Miss. 1943).

17. Equity; promise not to revoke.

A breach of a contract not to revoke a will is just that a breach of contract. It is not grounds for contesting the will pertaining to the contract. Remedies, if any, of promissor's heirs lie on the contract or perhaps upon constructive trust theory. Trotter v. Trotter, 490 So. 2d 827, 1986 Miss. LEXIS 2485 (Miss. 1986).

A contract not to revoke a will may become irrevocable, as long as the promisee performs in accordance with the contract. Trotter v. Trotter, 490 So. 2d 827, 1986 Miss. LEXIS 2485 (Miss. 1986).

A proper rescission of a contract not to revoke a will does not revoke the will to which the contract pertains. Trotter v. Trotter, 490 So. 2d 827, 1986 Miss. LEXIS 2485 (Miss. 1986).

Where testator executes a will in compliance with an oral agreement with the devisee that the latter will render unique and necessary personal services to testator involving a substantial change in the status and manner of living of the promisee, and such services have been performed, so that a revocation of the will amounts to fraud upon the devisee rendering it impossible or impracticable to restore devisee to prior situation, equity will hold such will to be irrevocable and the rights thereunder may be established. Johnston v. Tomme, 199 Miss. 337, 24 So. 2d 730, 1946 Miss. LEXIS 202 (Miss. 1946).

RESEARCH REFERENCES

ALR.

Remarriage of woman after death of or divorce from former husband as revoking will executed during former marriage. 9 A.L.R.2d 510.

Conflict of laws respecting revocation of will. 9 A.L.R.2d 1412.

Destruction or cancelation of one copy of will executed in duplicate, as revocation of other copy. 17 A.L.R.2d 805.

Divorce or annulment as affecting will previously executed by husband or wife. 18 A.L.R.2d 697.

What constitutes fraud within statute relating to proof of will "fraudulently" destroyed during testator's lifetime. 23 A.L.R.2d 382.

Effect of testator's attempted physical alteration of will after execution. 24 A.L.R.2d 514.

Adoption of child as revoking will. 24 A.L.R.2d 1085.

Wills: revocation as affected by invalidity of some or all of dispositive provisions of later will. 28 A.L.R.2d 526.

Validity of oral promise or agreement not to revoke will. 29 A.L.R.2d 1229.

Codicil as reviving revoked will or codicil. 33 A.L.R.2d 922.

Implied revocation of will by later will or codicil. 59 A.L.R.2d 11.

Statutory revocation of will by subsequent birth or adoption of child. 97 A.L.R.2d 1044.

Revocation of will as affecting codicil and vice versa. 7 A.L.R.3d 1143.

Statute excluding testimony of one person because of death of another as applied to testimony in respect of lost or destroyed instrument. 18 A.L.R.3d 606.

Revocation of will by nontestamentary writing. 22 A.L.R.3d 1346.

Revocation of witnessed will by holographic will or codicil, where statute requires revocation by instrument of equal formality as will. 49 A.L.R.3d 1223.

Testator's failure to make new will, following loss of original will by fire, theft, or similar casualty, as constituting revocation of original will. 61 A.L.R.3d 958.

Divorce or annulment as affecting will previously executed by husband or wife. 71 A.L.R.3d 1297.

Revival, under doctrine of dependant relative revocation, of charitable bequest in will expressly revoked in later will containing same charitable bequest. 75 A.L.R.3d 877.

Disposition of insurance proceeds of personal property specifically bequeathed or devised. 82 A.L.R.3d 1261.

Marriage of testator or birth of testator's child as revoking will previously made in exercise of power of appointment. 92 A.L.R.3d 1244.

Validity of statutes or rules providing that marriage or remarriage of woman operates as revocation of will previously executed by her. 99 A.L.R.3d 1020.

Liability in damages for interference with expected inheritance or gift. 22 A.L.R.4th 1229.

Revocation of prior will by revocation clause in lost will or other lost instrument. 31 A.L.R.4th 306.

Sufficiency of evidence of nonrevocation of lost will not shown to have been inaccessible to testator – modern cases. 70 A.L.R.4th 323.

Pretermitted heir statutes: what constitutes sufficient testamentary reference to, or evidence of contemplation of, heir to render statute inapplicable. 83 A.L.R.4th 779.

Ademption or revocation of specific devise or bequest by guardian, committee, conservator, or trustee of mentally or physically incompetent testator. 84 A.L.R.4th 462.

Sufficiency of evidence of nonrevocation of lost will where codicil survives. 84 A.L.R.4th 531.

Action for tortious interference with bequest as precluded by will contest remedy. 18 A.L.R.5th 211.

Alzheimer's disease as affecting testamentary capacity. 47 A.L.R.5th 523.

Am. Jur.

79 Am. Jur. 2d, Wills § 454 et seq.

20B Am. Jur. Legal Forms 2d, Wills § 266:118 et seq., 266:288 et seq. (revocation, generally).

CJS.

95 C.J.S., Wills § 407 et seq.

§ 91-5-5. Children born after making of the will.

If a testator or testatrix, having a child or children born at the time of making and publishing his or her last will and testament, shall, at his or her death, leave a child or children born after the making and publishing such last will and testament, the child or children so after-born, if unprovided for by settlement and neither provided for nor disinherited, but only pretermitted, by the last will and testament, shall succeed to the same portion of the father's or mother's estate as such child or children would have been entitled to if the father or mother had died intestate, towards raising which portion the devisees and legatees shall contribute proportionately out of the parts devised and bequeathed to them by the same will and testament, in the same manner as is provided in the case of posthumous children.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (16); 1857, ch. 60, art. 36; 1871, § 2390; 1880, § 1264; 1892, § 4490; 1906, § 5080; Hemingway's 1917, § 3368; 1930, § 3352; 1942, § 659.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Rights of after-born children.

1. In general.

In interpreting a will, as affected by this section [Code 1942, § 659], and in an effort to determine the intent of the testatrix, the court should take into consideration all of the terms and provisions of the will and the circumstances surrounding the testatrix at the time at which she executed the will. Guion v. Guion, 232 Miss. 647, 100 So. 2d 351, 1958 Miss. LEXIS 313 (Miss. 1958).

Intent is to be determined by the words of the will and by circumstances surrounding the testator, including the events and circumstances happening after the execution of the will and before the death of the testator. Guion v. Guion, 232 Miss. 647, 100 So. 2d 351, 1958 Miss. LEXIS 313 (Miss. 1958).

In a case involving an adopted child born before the execution of a will, the court need not reach the question whether this section [Code 1942, § 659] was intended to apply to adopted children born after the execution of a will since the legislature intended pretermitted children provisions to apply only to children born after the will was made. Lee v. Foley, 224 Miss. 684, 80 So. 2d 765, 1955 Miss. LEXIS 531 (Miss. 1955).

2. Rights of after-born children.

Where a mother had two living children at the time she executed her will, the fact that she devised and bequeathed all of her property to her husband manifested an intent to disinherit her children as a class, so that a child born after the execution of the will had no inheritable rights in the mother's estate. Guion v. Guion, 232 Miss. 647, 100 So. 2d 351, 1958 Miss. LEXIS 313 (Miss. 1958).

A general devise of a remainder or reversionary interest to the heirs of the testator or to his children does not comprehend a posthumous child, so as to prevent it from claiming under the statute as a child pretermitted by the will, in the absence of anything to show that the child was in the mind of the testator. Mahaffey v. First Nat'l Bank, 231 Miss. 798, 97 So. 2d 756, 1957 Miss. LEXIS 567 (Miss. 1957).

Provisions of testator's will, directing that the residue of testator's estate should be distributed into four parts, with one part each going to his wife and then living children, and devising a life estate in certain property to testator's sister and brother-in-law, with reversion to the heirs of testator's body, did not manifest an intent to deprive two children born after the execution of the will, one posthumously, of the status of pretermitted children. Mahaffey v. First Nat'l Bank, 231 Miss. 798, 97 So. 2d 756, 1957 Miss. LEXIS 567 (Miss. 1957).

Child born within 10 months after testator's death, or after time devisees must be living to take under will, takes under will; "in esse." Scott v. Turner, 137 Miss. 636, 102 So. 467, 1925 Miss. LEXIS 6 (Miss. 1925).

After-born children held to inherit interest in decedent's estate; devises and legacies held subject to proportionate contribution to make up shares of after-born children. Clark v. Clark, 126 Miss. 455, 89 So. 4, 1921 Miss. LEXIS 51 (Miss. 1921).

After-born children not provided for in will held vested with absolute title to property as if parent had died intestate. Clark v. Clark, 126 Miss. 455, 89 So. 4, 1921 Miss. LEXIS 51 (Miss. 1921).

Child born during testator's life, after making of will and not mentioned therein, there being other living children, became vested with absolute title to share in estate. Watkins v. Watkins, 88 Miss. 148, 40 So. 1001, 1906 Miss. LEXIS 150 (Miss. 1906).

RESEARCH REFERENCES

ALR.

Adoption of child as revoking will. 24 A.L.R.2d 1085.

Marriage of testator or birth of testator's child as revoking will previously made in exercise of power of appointment. 92 A.L.R.3d 1244.

Conflict of laws as to pretermission of heirs. 99 A.L.R.3d 724.

Pretermitted heir statutes: what constitutes sufficient testamentary reference to, or evidence of contemplation of, heir to render statute inapplicable. 83 A.L.R.4th 779.

Legal status of posthumously conceived child of decedent. 17 A.L.R.6th 593.

Am. Jur.

79 Am. Jur. 2d, Wills § 541 et seq.

20B Am. Jur. Legal Forms 2d, Wills, § 266:112 (provision of codicil as to bequest to child born or adopted after execution of will).

6 Am. Jur. Proof of Facts 2d, Intentional Omission of Child from Will, § 8 et seq. (proof of intentional omission of child from will).

CJS.

95 C.J.S., Wills § 440.

§ 91-5-7. Bequests not to lapse in certain cases.

Whenever any estate of any kind shall or may be devised or bequeathed by the last will and testament of any testator or testatrix to any person being a child or descendant of such testator or testatrix, and such devisee or legatee shall, during the lifetime of such testator or testatrix, die testate or intestate, leaving a child or children, or one or more descendants of a child or children, who shall survive such testator or testatrix, in that case, such devise or legacy to such person so situated as above mentioned, and dying in the lifetime of the testator or testatrix, shall not lapse, but the estate so devised or bequeathed shall vest in such child or children, descendant or descendants, of such devisee or legatee in the same manner as if a legatee or devisee had survived the testator or testatrix and had died intestate.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (17); 1857, ch. 60, art. 37; 1871, § 2391; 1880, § 1265; 1892, § 4491; 1906, § 5081; Hemingway's 1917, § 3369; 1930, § 3553; 1942, § 660.

JUDICIAL DECISIONS

1. In general.

Where the residuary clause of the decedent's will gave an undivided one-half interest of the remainder of his estate to his wife, and secondly, an undivided one-half interest, per stirpes, to his children (by an earlier marriage), and where the wife predeceased the husband by one week, the chancery court properly rejected the stepchildren's argument that either spouse intended for all six children (the decedent's children and the stepchildren), to divide their estate equally, no matter which parent died first; because the writing was clear and spoke for itself, parol evidence was not admissible to alter the terms of the document, and the anti-lapse statute, Miss Code Ann. § 91-5-7, was clearly applicable, such that the failed devise to the wife passed to the decedent's natural children. Marlar v. Castillo-Ruiz (In re Will of Roland), 920 So. 2d 539, 2006 Miss. App. LEXIS 85 (Miss. Ct. App. 2006).

Rule as to lapsed devises is applicable primarily to instances where devisee named in will predeceased testatrix. Mississippi State Univ. Found. v. Clark (In re

Estate of Homburg), 697 So. 2d 1154, 1997 Miss. LEXIS 317 (Miss. 1997).

Testamentary gift to life income beneficiary of testamentary trust lapsed when beneficiary predeceased testatrix; however, gift over to remaindermen did not lapse, as remaindermen were capable of taking at time of death of testatrix. Mississippi State Univ. Found. v. Clark (In re Estate of Homburg), 697 So. 2d 1154, 1997 Miss. LEXIS 317 (Miss. 1997).

In a proceeding seeking interpretation of a residuary clause of a will in which the testator left his residual estate to his daughter and to his brothers and sisters, share and share alike, several of whom predeceased the testator, the chancellor properly held that the lapsed portions of the testator's estate descended by the laws of intestate succession to his daughter, his heir-at-law. Moffett v. Howard, 392 So. 2d 509, 1981 Miss. LEXIS 1903 (Miss. 1981).

Where a son died intestate prior to the death of the testatrix and left a son and daughter as his surviving heirs, such surviving heirs succeeded to the share of their father in the estate. Martin v. Eslick, 229 Miss. 234, 90 So. 2d 635, 1956 Miss. LEXIS 604 (Miss. 1956).

The rule as to lapsed devises is applicable primarily to instances where the devisee named in the will had died prior to the death of the testator. Hays v. Cole, 221 Miss. 459, 73 So. 2d 258, 1954 Miss. LEXIS 551 (Miss. 1954).

Under devise of residue of estate under will to the fiancee, two uncles and a cousin of testator, the share of one of the devisees who predeceased the testator goes to testator's heirs at law, and is not saved by this section [Code 1942, § 660]. Clark v. Case, 207 Miss. 163, 42 So. 2d 109, 1949 Miss. LEXIS 326 (Miss. 1949).

This section [Code 1942, § 660] does not apply to bequests to those who are not descendants of the testator, and a legacy to a niece who predeceased the testator lapsed so that her son did not inherit through her. Kullman v. Dreyfus' Estate, 201 Miss. 887, 30 So. 2d 81, 1947 Miss. LEXIS 460 (Miss. 1947).

Leasehold interest in school land in state owned by testatrix of other state is governed by Mississippi law; legacy lapses on death of legatee without children though statute of domicile of testatrix provides contrary. Neblett v. Neblett, 112 Miss. 550, 73 So. 575, 1916 Miss. LEXIS 145 (Miss. 1916).

RESEARCH REFERENCES

ALR.

Wills: antilapse statute as applicable to devise or bequest in terms of distributive share, under law, in estate of testator. 3 A.L.R.2d 1419.

Benefit of direction in deed or will for payments by grantee or devisee to third person as surviving latter's death, and passing as part of his estate. 6 A.L.R.2d 363.

Devise or bequest to designated individual "or his estate," "or his children," "or his representatives," or the like (other than "or his heirs"), as subject to lapse in event of individual's death before that of testator. 11 A.L.R.2d 1387.

Rights of party to void marriage in respect of transfers or gifts to other in mistaken belief marriage was valid. 14 A.L.R.2d 918.

Who is "child," "issue," "descendant," "relation," "heir," etc., within antilapse statute describing the person taking through or from the legatee or devisee. 19 A.L.R.2d 1159.

Devolution of lapsed portion of residuary estate. 36 A.L.R.2d 1117.

Applicability of anti-lapse statutes to class gifts. 56 A.L.R.2d 948.

Testator's intention as defeating operation of antilapse statute. 63 A.L.R.2d 1172.

Who are within terms "relation," "descendant," "child," "brother," "sister," etc., describing legatee or devisee, in statute providing against lapse upon death of legatee or devisee before testator. 63 A.L.R.2d 1195.

Ademption of bequest of proceeds of property. 45 A.L.R.3d 10.

Anti-lapse statute as applicable to interest of beneficiary under inter vivos trust who predeceases life-tenant settlor. 47 A.L.R.3d 358.

Am. Jur.

80 Am. Jur. 2d, Wills §§ 1416, 1417 et seq.

20B Am. Jur. Legal Forms 2d, Wills § 266:644 et seq. (lapse; gifts over).

CJS.

97 C.J.S., Wills, §§ 2085-2087 et seq.

§ 91-5-9. Devise to witness void.

If any person be a subscribing witness to a will wherein any devise or bequest is made to him and the will cannot otherwise be proven, such devise or bequest shall be void, and the witness shall be competent as to the residue of the will as if a devise or bequest had not been made to him, and he may be compelled to testify. If such witness would have been entitled to any share of the testator's estate in case the will were not established, then so much of such share shall be saved to the witness as shall not exceed the value of the devise or bequest made to him in the will.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (27); 1857, ch. 60, art. 45; 1871, § 1101; 1880, § 1973; 1892, § 1826; 1906, § 2001; Hemingway's 1917, § 1666; 1930, § 3554; 1942, § 661.

JUDICIAL DECISIONS

1. In general.

Trial court erred by finding in a motion for summary judgment that a purported holographic will of the decedent and a subsequent typewritten will of the decedent were not to be probated because the proponent of the wills created a genuine issue as to whether the wills had been signed and executed by the decedent through the statement by the proponent's former spouse in an affidavit that the spouse had witnessed the decedent sign the wills. Although the proponent was a named beneficiary in the wills, the spouse was not a named beneficiary. Yoakum v. Smith (In re Estate of Yoakum), 311 So. 3d 686, 2021 Miss. App. LEXIS 67 (Miss. Ct. App. 2021).

Where a devisee or legatee to the will is also a witness, the devise or bequest to him is void but the witness is competent as to the residue of the will, so the will is valid except as to the annulled legacy or devise. Estate of Crawford v. Crawford, 225 Miss. 208, 82 So. 2d 823, 1955 Miss. LEXIS 574 (Miss. 1955).

Devise to witness is void, but witness is competent to establish residue of the will. Swanzy v. Kolb, 94 Miss. 10, 46 So. 549, 1908 Miss. LEXIS 2 (Miss. 1908); Estate of Crawford v. Crawford, 225 Miss. 208, 82 So. 2d 823, 1955 Miss. LEXIS 574 (Miss. 1955).

Where a husband qualified as executor under the will of his wife, proved the will as a subscribing witness, and administered the estate, he is estopped to claim title to land belonging to him and devised by the will to a third party. In this case this section [Code 1942, § 661] was not invoked, and the husband took the bequests and devises under the will. West v. West, 131 Miss. 880, 95 So. 739, 1923 Miss. LEXIS 223 (Miss. 1923).

Words "otherwise to be proved" in this section [Code 1942, § 661] refer to execution and not proof of contents of will. Swanzy v. Kolb, 94 Miss. 10, 46 So. 549, 1908 Miss. LEXIS 2 (Miss. 1908).

RESEARCH REFERENCES

ALR.

Amount or value of testamentary gift as affecting application of statute invalidating will attested by beneficially interested witness or limiting benefit to such witness. 73 A.L.R.2d 1230.

Exception or proviso in statute invalidating testamentary gift to subscribing witness, saving the share witness would take in absence of will. 95 A.L.R.2d 1256.

Am. Jur.

79 Am. Jur. 2d, Wills §§ 263 et seq., 275, 276 et seq.

CJS.

95 C.J.S., Wills §§ 86-92, 262-276.

§ 91-5-11. Devise or bequest to trustee.

(1) A devise or bequest in a will duly executed pursuant to the provisions of Section 91-5-1 of Mississippi Code of 1972 may be made to the trustee of a trust which is evidenced by a written instrument in existence when the will is made and which is identified in the will. Such devise or bequest shall not be invalid because the trust is amendable or revocable, or both, by the settlor or any other person or persons; nor because the trust instrument or any amendment thereto was not executed in the manner required for wills; nor because the trust was amended after execution of the will. Unless the will provides otherwise, such devise or bequest shall operate to dispose of the property under the terms and provisions of the instrument creating the trust, including any amendments or modifications in writing made at any time before or after the making of the will and before the death of the testator, and the property shall not be deemed held under a testamentary trust. An entire revocation of the trust prior to the testator's death shall invalidate the devise or bequest.

(2) The provisions of this section shall apply to all devises or bequests made in any will duly executed according to said section of any testator dying after May 6, 1958, whether the will is executed before or after that date.

(3) The term "will" in this section shall include and refer to the term "codicil".

HISTORY: Codes, 1942, § 661.5; Laws, 1958, ch. 240, §§ 1-3, eff. upon passage (approved May 6, 1958).

Cross References — Definition of term "will," see § 1-3-59.

RESEARCH REFERENCES

ALR.

Effect of impossibility of performance of condition precedent to testamentary gift. 40 A.L.R.4th 193.

§ 91-5-13. Creditor competent witness to will.

Any creditor shall be a competent subscribing witness to a last will and testament; but any special provision in favor of such creditor in the will, either by admitting the debt or by providing for its payment or by giving it a preference, shall be void, and such claim shall stand as though the provision had not been made.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (44); 1857, ch. 60, art. 46;

1871, § 1102; 1880, § 1974; 1892, § 1827; 1906, § 2002; Hemingway's 1917, § 1667; 1930, § 3555; 1942, § 662.

§ 91-5-15. Nuncupative wills.

A nuncupative will shall not be established unless it be made in the time of the last sickness of the deceased at his or her habitation or where he or she hath resided for ten days next preceding the time of his or her death, except when such person is taken sick from home and die before his or her return to such habitation, nor where the value bequeathed exceeds One Hundred Dollars ($100.00) unless it be proved by two witnesses that the testator or testatrix called on some person present to take notice or bear testimony that such is his or her will, or words to that effect.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (18); 1857, ch. 60, art. 38; 1871, § 2392; 1880, § 1266; 1892, § 4492; 1906, § 5082; Hemingway's 1917, § 3370; 1930, § 3556; 1942, § 663.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Devise of lands.
3. Foreign nuncupative wills.
4. Not found.

1. In general.

Biological father entitled to inherit from illegitimate child is entitled to share in recovery in wrongful death action. Burdette v. Crump, 472 So. 2d 959, 1985 Miss. LEXIS 2142 (Miss. 1985).

"Last sickness," as used in statute permitting nuncupative wills under certain conditions, means that at time of making will testator is in extremis, at least so near death that he did not have reasonable time and opportunity to make written will. Schmitz v. Summers, 179 Miss. 260, 174 So. 569, 1937 Miss. LEXIS 20 (Miss. 1937).

Where testator made nuncupative will while sick with illness of which he died, but neither testator nor his physician considered his condition mortally serious, will was invalid under statute requiring nuncupative wills to be made "in the time of last sickness." Schmitz v. Summers, 179 Miss. 260, 174 So. 569, 1937 Miss. LEXIS 20 (Miss. 1937).

Nuncupative will is testamentary declaration, not in writing, made before sufficient number of witnesses when testator is in extremis. Lee v. Barrow, 156 Miss. 711, 126 So. 648, 1930 Miss. LEXIS 211 (Miss. 1930).

Nuncupative will requires intent of testator that declaration then made constitute his will without being embodied in written instrument. Lee v. Barrow, 156 Miss. 711, 126 So. 648, 1930 Miss. LEXIS 211 (Miss. 1930).

Instrument dictated in form of letter to executor was simply defectively executed written will and not subject to probate as nuncupative will. Lee v. Barrow, 156 Miss. 711, 126 So. 648, 1930 Miss. LEXIS 211 (Miss. 1930).

The witnesses are not required to prove the presence of each other. Burch v. Stovall, 27 Miss. 725, 1854 Miss. LEXIS 118 (Miss. 1854).

2. Devise of lands.

Lands do not pass under a nuncupative will. Sadler v. Sadler, 60 Miss. 251, 1882 Miss. LEXIS 42 (Miss. 1882).

3. Foreign nuncupative wills.

The removal and change of citizenship from Louisiana to this state of a person who has executed a nuncupative will in that state according to its laws does not revoke the will. Pratt v. Hargraves, 77 Miss. 892, 28 So. 722, 1900 Miss. LEXIS 52 (Miss. 1900).

4. Not found.

Where a joint owner of a certificate of deposit (CD) still retained an ownership interest when the CD was reissued with new owners right at the time of her death, there was no violation of Miss. Code Ann. § 91-5-15 since there was no testamentary devise. DeJean v. DeJean, 982 So. 2d 443, 2007 Miss. App. LEXIS 730 (Miss. Ct. App. 2007), cert. denied, 981 So. 2d 298, 2008 Miss. LEXIS 236 (Miss. 2008).

RESEARCH REFERENCES

ALR.

What amounts to "last sickness" or the like within requirement that nuncupative will be made during last sickness. 8 A.L.R.3d 952.

Am. Jur.

79 Am. Jur. 2d, Wills § 625 et seq.

20 Am. Jur. Legal Forms 2d, Wills, § 266:92 (nuncupative will: affidavit by witness who reduced testamentary words to writing).

CJS.

95 C.J.S., Wills § 340 et seq.

Law Reviews.

Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March, 1982.

§ 91-5-17. Parties in interest to nuncupative will to be cited.

The probate of any nuncupative will shall not be taken, or letters testamentary granted thereon, until after the expiration of fourteen days from the time of the decease of the testator or testatrix, nor until the widow, if any, and next of kin, if resident in this state, have been summoned to contest the same if they think proper.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (18); 1857, ch. 60, art. 40; 1871, § 2394; 1880, § 1268; 1892, § 4494; 1906, § 5084; Hemingway's 1917, § 3372; 1930, § 3557; 1942, § 664.

RESEARCH REFERENCES

Law Reviews.

Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March, 1982.

§ 91-5-19. Nuncupative will not to be proven after six months unless reduced to writing.

After six months have elapsed from the time of speaking the alleged testamentary words, testimony shall not be received to probate a nuncupative will unless the words, or the substance thereof, shall have been reduced to writing within six days after speaking the same.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (18); 1857, ch. 60, art. 39; 1871, § 2393; 1880, § 1267; 1892, § 4493; 1906, § 5083; Hemingway's 1917, § 3371; 1930, § 3558; 1942, § 665.

JUDICIAL DECISIONS

1. In general.

The word "prove," (Code 1871, § 2393) had reference to probate; but, if probated within six months, testimony to establish the will on an issue devisavit vel non would not be rejected. George v. Greer, 53 Miss. 495, 1876 Miss. LEXIS 101 (Miss. 1876).

RESEARCH REFERENCES

Law Reviews.

Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March, 1982.

§ 91-5-21. Members of armed forces and mariners at sea excepted.

Any person of sound mind eighteen years of age or older and being in the armed forces of the United States of America, in active service at home or abroad or being a mariner at sea, may devise, dispose of, and bequeath his goods and chattels or property, real and personal, anything in this chapter to the contrary notwithstanding.

Any will executed prior to July 23, 1968, which conforms to the requirements of this section shall be valid; provided, however, that the testator of said will must be alive at said date.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (21); 1857, ch. 60, art. 41; 1871, § 2395; 1880, § 1269; 1892, § 4495; 1906, § 5085; Hemingway's 1917, § 3373; 1930, § 3559; 1942, § 666; Laws, 1968, ch. 307, §§ 1, 2, eff from and after passage (approved July 23, 1968).

RESEARCH REFERENCES

Am. Jur.

79 Am. Jur. 2d, Wills § 632 et seq.

CJS.

95 C.J.S., Wills §§ 351-353.

§ 91-5-23. Provision for husband or wife to be in bar.

Any provision by the will of the husband or wife for the other shall be construed to be in bar of any share of the real or personal estate of the testator, unless it be otherwise expressed in the will.

HISTORY: Codes, 1880, § 1174; 1892, § 4498; 1906, § 5088; Hemingway's 1917, § 3376; 1930, § 3560; 1942, § 667.

Cross References — Descent of property between husband and wife, see § 91-1-7.

JUDICIAL DECISIONS

1. In general.

Widow of testator dying without children inherits all undisposed of property, including lapsed devises; widow of testator dying without children not precluded from inheriting undisposed property because she takes life estate under the will. Marx v. Hale, 131 Miss. 290, 95 So. 441, 1922 Miss. LEXIS 289 (Miss. 1923).

Where the widow gets nothing by the will or where the devise to her is unsatisfactory and she renounces the will she takes a child's part, but where she takes a legacy under the will, and the will is expressly made in lieu of the allowance of one year's provisions and all exemptions, she may not without renouncing the will take the legacy and the year's provisions and other exemptions. McGaughey v. Eades, 78 Miss. 853, 29 So. 516, 1901 Miss. LEXIS 132 (Miss. 1901).

The remedy of the husband or wife who is dissatisfied with the provision made for him or her in the will of the other is to renounce such provision and claim a distributive share of the estate, whether it includes the homestead or other property, as provided by Code 1942, § 668; or if no such provision is made in the will, to claim such distributive share under Code 1942, §§ 667, 669, without renunciation. Kelly v. Alred, 65 Miss. 495, 4 So. 551, 1888 Miss. LEXIS 30 (Miss. 1888).

RESEARCH REFERENCES

ALR.

Priority of surviving spouse who accepts provision of will in lieu of dower or other marital rights over other legatees and devisees and creditors. 2 A.L.R.2d 607.

Spouse's right to take under other spouse's will as affected by antenuptial or postnuptial agreement or property settlement. 53 A.L.R.2d 475.

Surviving spouse's right to marital share as affected by valid contract to convey by will. 85 A.L.R.4th 418.

Validity of Postnuptial Agreements in Contemplation of Spouse's Death. 87 A.L.R.6th 495.

§ 91-5-25. Right of spouse to renounce will; form of renunciation; right to intestate share.

When a husband makes his last will and testament and does not make satisfactory provision therein for his wife, she may, at any time within ninety (90) days after the probate of the will, file in the office where probated a renunciation to the following effect, viz.: "I, A B, the widow of C D, hereby renounce the provision made for me by the will of my deceased husband, and elect to take in lieu thereof my legal share of his estate." Thereupon she shall be entitled to such part of his estate, real and personal, as she would have been entitled to if he had died intestate, except that, even if the husband left no child nor descendant of such, the widow, upon renouncing, shall be entitled to only one-half (½) of the real and personal estate of her deceased husband. The husband may renounce the will of his deceased wife under the same circumstances, in the same time and manner, and with the same effect upon his right to share in her estate as herein provided for the widow.

HISTORY: Codes, 1871, § 1282; 1880, § 1172; 1892, § 4496; 1906, § 5086; Hemingway's 1917, § 3374; 1930, § 3561; 1942, § 668; Laws, 1975, ch. 373, § 1, eff from and after January 1, 1976.

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1. In general.

Where a husband can properly renounce his wife's will, and there are no children, he is entitled to one half of the estate of his deceased wife; however, the right of a husband to renounce is qualified by Code 1942, § 670, which expressly applies to husband renouncing the will of his wife. Myers v. Laird, 230 Miss. 675, 93 So. 2d 828, 1957 Miss. LEXIS 409 (Miss. 1957).

The effect of renunciation is to make the deceased spouse an intestate as to one-half of the willed property, leaving the will to stand as to the other half, so that the deductions provided in Code 1942, § 670, on account of the separate estate of the surviving spouse are to be taken out of the half of the total estate to which the surviving spouse is limited by this section. [Code 1942, § 668]. Davis v. Miller, 202 Miss. 880, 32 So. 2d 871, 1947 Miss. LEXIS 351 (Miss. 1947).

2. Construction.

Code 1942, §§ 470 and 668, must be construed together. Callicott & Norfleet v. Callicott, 90 Miss. 221, 43 So. 616, 1907 Miss. LEXIS 83 (Miss. 1907).

A failure to renounce within the statutory time amounts to an election to take under the will. Collins v. Melton, 40 Miss. 242, 1866 Miss. LEXIS 67 (Miss. 1866).

3. Who may take or renounce.

A wife justified in living separate and apart from her husband at the time of his death, there being no children, was entitled to renounce his will and take one-half of his estate, less the value of her own separate property. Stringer v. Arrington, 202 Miss. 798, 32 So. 2d 879, 1947 Miss. LEXIS 342 (Miss. 1947).

4. —Common law spouse.

In a proceeding to renounce will and to obtain a year's support from the estate on ground that plaintiff had been testator's common law wife, the will which did not refer to the plaintiff as wife, but left her an annuity as long as she was unmarried, could be taken into consideration. Martin v. Martin's Estate, 217 Miss. 173, 63 So. 2d 827, 1953 Miss. LEXIS 421 (Miss. 1953).

In a proceeding to renounce will and to obtain a year's support from the estate on ground that plaintiff had been testator's common law wife, income returns for years during which plaintiff claimed to have been testator's common law wife in which plaintiff reported herself as single person constituted competent evidence since they were declarations against interest. Martin v. Martin's Estate, 217 Miss. 173, 63 So. 2d 827, 1953 Miss. LEXIS 421 (Miss. 1953).

In a proceeding to renounce will and to obtain a year's support from the estate on ground that plaintiff had been testator's common law wife, income tax reports for a period which plaintiff claimed to be common law wife, filed by the plaintiff as a single person did not constitute a waiver of plaintiff's disqualification as witness under the Deadman's Statute. Martin v. Martin's Estate, 217 Miss. 173, 63 So. 2d 827, 1953 Miss. LEXIS 421 (Miss. 1953).

5. Time within which to renounce.

Substantial evidence supported the chancery court's judgment awarding a wife a one-third interest in a decedent's estate because the wife filed a renunciation of the provision made for her in the will and her intention to elect her spousal share within the time period established by the statute, and the chancery court found that the wife complied with the statute. Chester v. Labasse (in re Estate of Labasse), — So. 3d — (Miss. 2017)

Widow may renounce at any time within 6 months after probate; widow and not court determines what is "satisfactory provision." Simpson v. Simpson, 120 Miss. 197, 82 So. 3, 1919 Miss. LEXIS 77 (Miss. 1919).

Spouse's right to renounce will under statute was personal and abated at her demise; therefore, such right may not be undertaken by personal representative after death of spouse, even where death occurs prior to expiration of statutory period for election. Shattuck v. Estate of Tyson, 508 So. 2d 1077, 1987 Miss. LEXIS 2556 (Miss. 1987).

A widow's renunciation of her husband's will, which renunciation was made before the will was admitted to probate, was nevertheless effective and valid, despite the provision in § 91-5-25 stating that renunciation may be made at any time within 90 days after the probate of the will. Gettis v. McAllister, 411 So. 2d 770, 1982 Miss. LEXIS 1917 (Miss. 1982).

6. Right as personal.

Spouse's right to renounce will under statute was personal and abated at her demise; therefore, such right may not be undertaken by personal representative after death of spouse, even where death occurs prior to expiration of statutory period for election. Shattuck v. Estate of Tyson, 508 So. 2d 1077, 1987 Miss. LEXIS 2556 (Miss. 1987).

Where a wife in her will failed to make any provision for her surviving husband, and the husband's property was not equal to his lawful portion of the wife's estate, the right of the husband to renounce the will and to take his legal share of the wife's estate vested as a matter of law and became part of his estate upon his death, exercisable by the executor of the husband's estate, even though before his death, 3 weeks following his wife's death, the husband did not renounce the wife's will or take any affirmative action with reference thereto. McBride v. Haynes, 247 So. 2d 129, 1971 Miss. LEXIS 1436 (Miss. 1971).

The personal representative of a deceased spouse does not have the right to renounce the will of a predeceased spouse under this section [Code 1942, § 668], for the privilege is one which must be invoked personally by the surviving spouse during her lifetime. Jenkins v. Borodofsky, 211 So. 2d 874, 1968 Miss. LEXIS 1288 (Miss. 1968).

Equitable estoppel does not and cannot authorize the exercise of a personal right which terminates with the death of a spouse, and the fact that a husband shot and killed his wife, an act which would have precluded his inheriting her estate, is no justification for permitting the deceased wife's personal representatives to renounce the husband's will, an act which by law can only be invoked personally by a surviving spouse. Jenkins v. Borodofsky, 211 So. 2d 874, 1968 Miss. LEXIS 1288 (Miss. 1968).

The right to renounce a will conferred by this statute upon a surviving spouse may not be exercised by his or her administrator. Estate of Mullins v. Estate of Mullins, 239 Miss. 751, 125 So. 2d 93, 1960 Miss. LEXIS 350 (Miss. 1960).

7. Renunciation for person non compos mentis.

Where a widow has been mentally incompetent continuously from the death of the testator and has no guardian acting in her behalf during the statutory period for renunciation, its lapse is no bar to a subsequent election in her behalf by the court, or guardian acting under supervision and approval of the court; for the general rule is that where an election is required by statute to be made within a certain period of time, the incompetency of the person entitled to elect is considered as warranting an extension of the statutory period. Wolcott v. Wolcott, 184 So. 2d 381, 1966 Miss. LEXIS 1459 (Miss. 1966).

The general savings statute in favor of those under disabilities insofar as limitations of actions are concerned does not apply to the statute giving a widow the right to renounce her husband's will under certain circumstances. Wolcott v. Wolcott, 184 So. 2d 381, 1966 Miss. LEXIS 1459 (Miss. 1966).

The right to renounce a will conferred by this statute upon a surviving spouse may be exercised by a guardian in case of such spouse's incompetency. Estate of Mullins v. Estate of Mullins, 239 Miss. 751, 125 So. 2d 93, 1960 Miss. LEXIS 350 (Miss. 1960).

Guardian, with approval of chancery court, may renounce for widow non compos mentis. Hardy v. Richards, 98 Miss. 625, 54 So. 76, 1910 Miss. LEXIS 101 (Miss. 1910).

8. Effect on right to contest will.

Renouncement by a widow of her husband's will does not constitute an abandonment of her action to contest the will, since renouncement does not affect the validity of the will but merely affects the amount of property which the parties receive, and, therefore, renouncement does not constitute an estoppel to contest the will. Edwards v. Edwards, 193 Miss. 889, 11 So. 2d 450, 1943 Miss. LEXIS 16 (Miss. 1943).

Where a widow contesting the will of her husband renounced within the time prescribed, there was no inconsistency between such renunciation and the will contest so as to preclude her appeal from an adverse decision in the will contest, since both by the renunciation and the contest, if successful, she takes by inheritance; and renunciation is not an abandonment of the contest since renouncement does not affect the validity of the will but merely affects the amount of property which the parties receive. Edwards v. Edwards, 193 Miss. 889, 11 So. 2d 450, 1943 Miss. LEXIS 16 (Miss. 1943).

Renunciation by a widow of her husband's will within the time prescribed and pending an appeal from a judgment against her in a contest of the will, did not preclude her from prosecuting her appeal in the will contest irrespective of any inconsistency between renunciation and the prosecution of the appeal. Edwards v. Edwards, 193 Miss. 889, 11 So. 2d 450, 1943 Miss. LEXIS 16 (Miss. 1943).

9. Effect on executorship.

Husband must renounce wife's will and refuse qualification as executor if he would keep on property devised thereunder. West v. West, 131 Miss. 880, 95 So. 739, 1923 Miss. LEXIS 223 (Miss. 1923).

10. Testator having foreign domicil.

Husband may renounce wife's will and take child's share, although domicil of testatrix in foreign state. Bolton v. Barnett, 131 Miss. 802, 95 So. 721, 1923 Miss. LEXIS 220 (Miss. 1923).

Right of husband to renounce will of wife and take child's part governed by law of state, and not by law of wife's domicil; husband renouncing will of wife, who also leaves children, may take child's part in both real and personal property. Bolton v. Barnett, 131 Miss. 802, 95 So. 721, 1923 Miss. LEXIS 220 (Miss. 1923).

11. Contract to make or renounce will.

Although proper contracts not to renounce a will are enforceable even though Code 1972 § 91-5-25 provides that a husband or wife may renounce the will of another, the wife's agreement not to renounce her will constituted an unconscionable contract so as to permit the wife's renunciation of her husband's will, notwithstanding her prior agreement not to renounce, where the wife was taken by her husband directly from her job to the office of the husband's attorney and persuaded to assign the contract without prior knowledge of its existence or the opportunity to read the entire contract, and where the provision in the will, giving the wife a life estate in the parties' homestead as long as she continued to live on the property, was minimal consideration when viewed against her rights under the laws of descent and distribution including her statutory right to a life estate in the homestead under Code 1972 § 91-1-23 irrespective of her living on the property. In re Will of Johnson, 351 So. 2d 1339, 1977 Miss. LEXIS 1950 (Miss. 1977).

Release of a right to renounce wife's will by the husband constituted sufficient consideration for a contract by the wife to will to the husband or his issue one third of her estate, so that the wife could not, by revoking the will executed pursuant to the contract, defeat the rights of the predeceased husband's issue. In re Estate of Sadler, 232 Miss. 349, 98 So. 2d 863, 1957 Miss. LEXIS 482 (Miss. 1957).

Husband's will giving property to one who provided for him pursuant to contract was an obligation of the contract, not an abrogation of the contract which would enable widow to renounce will. Price v. Craig, 164 Miss. 42, 143 So. 694, 1932 Miss. LEXIS 218 (Miss. 1932).

12. Valuation, calculation.

The value of real property in Louisiana would not be included in the value of an estate for the purpose of determining the lawful portion of the surviving husband of the testatrix, when he renounced the will in Mississippi, by the testatrix' real and personal estate in Mississippi. Banks v. Junk, 264 So. 2d 387, 1972 Miss. LEXIS 1356 (Miss. 1972).

In a proceeding to determine whether surviving husband's separate estate was equal in value to one half portion of his deceased wife's estate, the chancellor properly found that the husband had not conveyed his one half interest in certain Louisiana property to his children prior to wife's death, but had given the property to his children by an act of donation after the event; thus, the value of the husband's one half interest in the Louisiana property, less one half of the outstanding mortgage loan, should have been included in the valuation of his separate estate along with the value of his personal property, and he was precluded by Code 1942, § 670, from renouncing his wife's will, which made no provision for him, since his property at the time of her death was more than equal in value to what would have been his lawful portion of her estate. Myers v. Laird, 230 Miss. 675, 93 So. 2d 828, 1957 Miss. LEXIS 409 (Miss. 1957).

Where testatrix had willed an estate of the value of $90,000, and surviving husband had a separate estate worth $30,000, upon renunciation the surviving husband was entitled only to have the value of his separate estate deducted from one-half of the value of testatrix's estate, leaving the sum of $15,000 as a deficiency to be made up for the surviving husband. Davis v. Miller, 202 Miss. 880, 32 So. 2d 871, 1947 Miss. LEXIS 351 (Miss. 1947).

13. Effect on trusts, insurance proceeds.

Where will gave widow one-half interest in testator's entire estate except proceeds of an insurance policy, which were directed to be used to pay certain legacies and to set up a trust for testator's adopted son, widow on renunciation was entitled to one-half the personal estate to the extent of impairing the trust if net personal estate was insufficient. Campbell v. Cason, 206 Miss. 420, 40 So. 2d 258, 1949 Miss. LEXIS 271 (Miss. 1949).

Where a widow renounced will leaving her one-half of testator's entire estate except proceeds of insurance policy which were to be used to pay bills of testator's aged father not to exceed $500 and to provide small monthly payments for such father's living expenses, with residue to be used in trust for adopted son, and personal estate of testator was substantial, award to widow would not be postponed pending ascertainment of liabilities with respect to insurance proceeds, since such contingent liabilities were inconsequential in comparison with the net personal estate of the testator. Campbell v. Cason, 206 Miss. 420, 40 So. 2d 258, 1949 Miss. LEXIS 271 (Miss. 1949).

Where widow renounced will, leaving her undivided one-half interest in the entire estate excluding proceeds of an insurance policy, and contained a similar provision for testator's adopted son together with a trust in favor of such son with respect to the insurance proceeds, the son took under the will and not as an heir. Campbell v. Cason, 206 Miss. 420, 40 So. 2d 258, 1949 Miss. LEXIS 271 (Miss. 1949).

14. Effect on debts.

Widow accepting devise made subject to payment of debts must pay them though she might have renounced. Rainey v. Rainey, 124 Miss. 780, 87 So. 128, 1920 Miss. LEXIS 550 (Miss. 1920).

The estate does not on the widow's election to take against the will become intestate as to the widow's share so as to incumber that share primarily with the debts of the estate, but she is entitled to the same proportion of the estate which she would have taken had her husband died intestate, after the payment of the debts from the whole estate. Gordon v. James, 86 Miss. 719, 39 So. 18, 1905 Miss. LEXIS 93 (Miss. 1905).

15. Application in particular cases.

Chancery court was not manifestly wrong in granting a widow a child's share of her late husband's estate after finding that she had not abandoned her marriage because there was no legal change of marital status; the changer court found that the widow did not willfully leave or have the intention of permanently separating from the marital relationship. Estes v. Estes, 226 So. 3d 583, 2017 Miss. LEXIS 223 (Miss. 2017).

The right of a widow to renounce her husband's will could not be exercised by the co-conservators of her estate where no evidence was presented to the court demonstrating that the widow was non compos mentis, and court approval for the co-conservators to file on her behalf was neither requested nor given. Greer v. State, 755 So. 2d 511, 1999 Miss. App. LEXIS 434 (Miss. Ct. App. 1999).

A trial court erred in considering a widow's homestead right as part of her separate estate for purposes of determining and reducing the value of her statutory share of the net assets of the estate resulting from her election against her husband's will since her homestead right was not property owned by her at the time of her husband's death, but accrued to her as the result of her husband's death and the renunciation of his will. Holloway v. Holloway (In re Estate of Holloway), 631 So. 2d 127, 1993 Miss. LEXIS 603 (Miss. 1993).

Widow who had entered into a property settlement agreement with husband may not elect to take against his will unless her estate is less than one half of her deceased husband's estate. Will of Best v. Brewer, 236 Miss. 359, 111 So. 2d 262, 1959 Miss. LEXIS 325 (Miss. 1959).

Under Code 1942, § 668, together with Code 1942, § 670, the widow is entitled to one-half of testator's net estate, where he died leaving widow and adopted son as only heirs of law. Campbell v. Cason, 206 Miss. 420, 40 So. 2d 258, 1949 Miss. LEXIS 271 (Miss. 1949).

Upon a widow's renunciation of a testator's will devising to her a life estate in his home with remainder to a daughter, the widow became entitled to a one-third interest to the property in fee, and the daughter to the other two-thirds interest therein, subject to the right of the widow to occupy and use it during her widowhood. Milton v. Milton, 193 Miss. 563, 10 So. 2d 175, 1942 Miss. LEXIS 131 (Miss. 1942).

Where a testator directed that monthly payments of $200 be made to his wife so long as she remained his widow, and that, "in the event of the death or remarriage of my wife, and $200 monthly payments shall cease, then" the sum of $75 per month should be paid to a daughter and to a stepdaughter, the use of the words "and $200 monthly payments shall cease" between the words "wife" and "then" demonstrated that he meant that the payment to the daughters should begin on the cessation for any reason of the monthly payments bequeathed to the widow, and, upon renunciation of the will by the widow, the bequests of monthly payments to the daughters became at once effective, regardless of the fact that the widow was still living and had not remarried. Milton v. Milton, 193 Miss. 563, 10 So. 2d 175, 1942 Miss. LEXIS 131 (Miss. 1942).

Provision that on renunciation husband shall be entitled to one-half of wife's estate does not limit his rights as heir to property not devised. Cain v. Barnwell, 124 Miss. 860, 87 So. 484, 1921 Miss. LEXIS 190 (Miss. 1921).

Widow with one child upon renouncing took child's part. Williams v. Williams, 111 Miss. 129, 71 So. 300, 1916 Miss. LEXIS 253 (Miss. 1916).

Upon renunciation one-half of land not going to widow descended as intestate property, and did not go to residuary legatees. Gordan v. Perry, 98 Miss. 893, 54 So. 445, 1910 Miss. LEXIS 139 (Miss. 1910).

Upon renouncing will widow became tenant in common with residuary legatees and devisees, and with them entitled to sue for partition. Laughlin v. O'Reily, 92 Miss. 121, 45 So. 193, 1907 Miss. LEXIS 11 (Miss. 1907).

Where 3 of 6 children of testator received advancements extinguishing their rights in estate, widow by renouncing became entitled to one-fourth interest. Callicott & Norfleet v. Callicott, 90 Miss. 221, 43 So. 616, 1907 Miss. LEXIS 83 (Miss. 1907).

The estate does not on the widow's election to take against the will become intestate as to the widow's share so as to incumber that share primarily with the debts of the estate, but she is entitled to the same proportion of the estate which she would have taken had her husband died intestate, after the payment of the debts from the whole estate. Gordon v. James, 86 Miss. 719, 39 So. 18, 1905 Miss. LEXIS 93 (Miss. 1905).

Where a widow has elected under this section [Code 1942, § 668] to take against her husband's will she becomes a co-tenant with the devisee in each and every parcel of real estate specifically devised by her deceased husband, and is not made a creditor of the estate by Code 1906, § 5089 (Code 1942, § 670). Gordon v. James, 86 Miss. 719, 39 So. 18, 1905 Miss. LEXIS 93 (Miss. 1905).

16. Effect, tax deductions.

The estate tax marital deduction available under 26 USCS § 2056 is not limited to the amount of property the taxpayer could receive by renouncing the will under state law. Waldrup v. United States, 499 F. Supp. 820, 1980 U.S. Dist. LEXIS 16059 (N.D. Miss. 1980).

RESEARCH REFERENCES

ALR.

Waiver or abandonment of, or estoppel to assert, prior renunciation of, or election to take against, spouse's will. 29 A.L.R.2d 227.

What passes under provision of will that spouse shall take share of estate allowed or provided by law, or a provision of similar import. 36 A.L.R.2d 147.

Who must bear loss occasioned by election against will. 36 A.L.R.2d 291.

Revocation or withdrawal of election to take under or against will. 71 A.L.R.2d 942.

Election by spouse to take under or against will as exercisable by agent or personal representative. 83 A.L.R.2d 1077.

What constitutes or establishes beneficiary's acceptance or renunciation of devise or bequest. 93 A.L.R.2d 8.

Factors considered in making election for incompetent to take under or against will. 3 A.L.R.3d 6.

Time within which election must be made for incompetent to take under or against will. 3 A.L.R.3d 119.

Who may make election for incompetent to take under or against will. 21 A.L.R.3d 320.

Extension of time within which spouse may elect to accept or renounce will. 59 A.L.R.3d 767.

Acceptance of benefits under will as election precluding enforcement of contract right as to property bequeathed. 60 A.L.R.3d 1147.

Surviving spouse taking elective share as chargeable with estate or inheritance tax. 67 A.L.R.3d 199.

Conflict of laws regarding election for or against will, and effect in one jurisdiction of election in another. 69 A.L.R.3d 1081.

Liability for administration expenses of spouse electing against will. 89 A.L.R.3d 315.

Extent of rights of surviving spouse who elects to take against will in profits of or increase in value of estate accruing after testator's death. 7 A.L.R.4th 989.

Construction, application, and effect of statutes which deny or qualify surviving spouse's right to elect against deceased spouse's will. 48 A.L.R.4th 972.

Determination of, and charges against, "augmented estate" upon which share of spouse electing to take against will is determined under Uniform Probate Code sec. 2-202. 63 A.L.R.4th 1173.

Surviving spouse's right to marital share as affected by valid contract to convey by will. 85 A.L.R.4th 418.

Am. Jur.

31 Am. Jur. 2d (Rev), Executors and Administrators §§ 677-681.

80 Am. Jur. 2d, Wills § 1355 et seq.

25 Am. Jur. Pl & Pr Forms (Rev), Wills, Forms 161 et seq. (election whether to take under will).

CJS.

34 C.J.S., Executors and Administrators §§ 460-462, 466 et seq.

Law Reviews.

1979 Mississippi Supreme Court Review: Miscellaneous. 50 Miss. L. J. 833, December, 1979.

Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March, 1982.

§ 91-5-27. Effect of no provision for husband or wife.

If the will of the husband or wife shall not make any provision for the other, the survivor of them shall have the right to share in the estate of the deceased husband or wife, as in case of unsatisfactory provision in the will of the husband or wife for the other of them. In such case a renunciation of the will shall not be necessary, but the rights of the survivor shall be as if the will had contained a provision that was unsatisfactory and it had been renounced.

HISTORY: Codes, 1880, § 1173; 1892, § 4497; 1906, § 5087; Hemingway's 1917, § 3375; 1930, § 3562; 1942, § 669.

JUDICIAL DECISIONS

1. In general.

Trial court erred in failing to determine whether a widow clearly deserted or abandoned her marriage when she left the decedent's home by her own volition after his leg was amputated, and was living in her own home when he died such that she was not entitled to take a child's share of the estate under Miss. Code Ann. § 91-5-27. In re Estate of Estes, 111 So. 3d 1223, 2012 Miss. App. LEXIS 820 (Miss. Ct. App. 2012).

No revocation of will as matter of law occurred when, subsequent to death of beneficiary, constructive trust was imposed on assets of estate resulting in husband's will making no provision for wife. Shattuck v. Estate of Tyson, 508 So. 2d 1077, 1987 Miss. LEXIS 2556 (Miss. 1987).

The trial court erred in holding that a husband was not entitled to an undivided one-half interest in the real and personal property owned by his deceased wife where, although the parties had lived apart for 15 to 20 years, there was no substantial evidence to show a desertion or abandonment as to estop the husband from claiming under the statute; at most the evidence proved that there had been a long separation between the parties. Tillman v. Williams, 403 So. 2d 880, 1981 Miss. LEXIS 2188 (Miss. 1981).

A wife's failure to renounce her husband's will in the six months after its probate constituted a waiver of her right to do so. Rush v. Rush, 360 So. 2d 1240, 1978 Miss. LEXIS 2341 (Miss. 1978).

In an action between the beneficiaries under testator's will and the heirs of his widow, who had renounced the will, the chancellor, after finding the testator's net estate and the widow's net estate at the time of testator's death, correctly determined that the estate should be distributed according to Code 1942, § 670, and that the widow's heirs were entitled to the difference between one half of the net estate of the testator and the net value of the widow's estate. The contention by the heirs at law of the widow that under the provisions of this section [Code 1942, § 669] the widow was entitled to one half of the real and personal estate of the testator without regard to Code 1942, § 670, and that in any event they were entitled to an undivided one third interest in the real property and one third of the net distribution of the personal property of the deceased, was rejected. Carter v. Evans, 230 Miss. 803, 94 So. 2d 237, 1957 Miss. LEXIS 425 (Miss. 1957).

Husband's will giving property to one who provided for him pursuant to contract prior to his marriage to the wife who survived him, and while a former wife was still living, was not abrogation of contract which would enable widow to renounce will. Price v. Craig, 164 Miss. 42, 143 So. 694, 1932 Miss. LEXIS 218 (Miss. 1932).

Husband not provided for in will, held entitled to undivided one-half interest in homestead lands devised by wife. Cain v. Barnwell, 125 Miss. 123, 87 So. 481, 1920 Miss. LEXIS 339 (Miss. 1920).

Husband without separate estate entitled to undivided interest in land devised where wife's will made no provision for him. Caine v. Barnwell, 120 Miss. 209, 82 So. 65, 1919 Miss. LEXIS 79 (Miss. 1919).

RESEARCH REFERENCES

ALR.

Inclusion of funds in savings bank trust (Totten Trust) in determining surviving spouse's interest in decedent's estate. 64 A.L.R.3d 187.

Surviving spouse's right to marital share as affected by valid contract to convey by will. 85 A.L.R.4th 418.

Am. Jur.

25 Am. Jur. Pl & Pr Forms (Rev), Wills, Forms 161 et seq. (election whether to take under will).

Law Reviews.

Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March, 1982.

§ 91-5-29. Effect of wife or husband having separate estate.

In case the wife have a separate property at the time of the death of her husband, equal in value to what would be her lawful portion of her husband's real and personal estate, and he have made a will, she shall not be at liberty to signify her dissent to the will or to renounce any provision or bequest therein in her favor and elect to take her portion of his estate. If her separate property be not equal in value to what would be the value of her portion of her husband's estate, then she may signify her dissent to the will, as in other cases provided by law, and claim to have the deficiency made up to her, notwithstanding the will. The court in which the will is probated may appoint three commissioners to ascertain, by valuation of the estate, what her lawful portion thereof would be worth; and the commissioners shall also value her own separate estate and report their valuation to the court. Whereupon the court shall make the proper order for allowing her to share in her husband's real and personal estate to make up the deficiency after the following rule: if her separate property be equal in value to two thirds of what she would be entitled to, she shall have one third of her lawful portion of the land and one third of what would be her distributive share of the personalty; if her separate property be worth half in value what she would be entitled to, then she shall be entitled to half her lawful portion of real estate and half of what would be her distributive share of the personalty; if her separate property be worth only one third in value what she would be entitled to, then she shall be entitled to two thirds of her lawful portion of real estate and two thirds of what would be her distributive share in the personalty. This section shall not preclude or prevent any married woman from renouncing the provisions of her husband's will and electing to take her lawful portion if her separate property do not amount in value to one fifth of what she would be entitled to. This section shall apply to a husband renouncing the will of his wife, and shall govern as to his right to share in her estate in such case.

HISTORY: Codes, 1857, ch. 40, art. 30; 1871, § 1789; 1880, § 1175; 1892, § 4499; 1906, § 5089; Hemingway's 1917, § 3377; 1930, § 3563; 1942, § 670.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Institution of valuation proceedings.
3. What includible in survivor's separate estate.
4. What includible in deceased's estate.
5. Particular applications.

1. In general.

The rule for the distribution of the estate of a decedent upon renunciation of a will is to determine the value of the gross estate of the decedent, deduct from that amount the debts of the decedent, administrative expenses and funeral expenses, leaving the net value of the decedent's estate; when the surviving spouse is entitled to one-half of the estate, the net value must be divided by two and the net value of the estate of the surviving spouse is deducted from such figure, and any balance remaining would be a deficiency to be made up to the surviving spouse. Banks v. Junk, 264 So. 2d 387, 1972 Miss. LEXIS 1356 (Miss. 1972).

Husband whose property greatly exceeds that of his wife may not renounce her will. Biggs v. Roberts, 237 Miss. 406, 115 So. 2d 151, 1959 Miss. LEXIS 485 (Miss. 1959).

Widow who had entered into a property settlement agreement with husband may not elect to take against his will unless her estate is less than one half of her deceased husband's estate. Will of Best v. Brewer, 236 Miss. 359, 111 So. 2d 262, 1959 Miss. LEXIS 325 (Miss. 1959).

Where a husband can properly renounce his wife's will, and there are no children, he is entitled to one half of the estate of his deceased wife; however, the right of a husband to renounce is qualified by this section [Code 1942, § 670], which expressly applies to husband renouncing the will of his wife. Myers v. Laird, 230 Miss. 675, 93 So. 2d 828, 1957 Miss. LEXIS 409 (Miss. 1957).

Under Code 1942, § 668, together with this section [Code 1942, § 670], the widow is entitled to one-half of testator's net estate, where he died leaving widow and adopted son as only heirs of law. Campbell v. Cason, 206 Miss. 420, 40 So. 2d 258, 1949 Miss. LEXIS 271 (Miss. 1949).

The effect of renunciation is to make the deceased spouse an intestate as to one-half of the willed property, leaving the will to stand as to the other half, so that the deductions provided in this section [Code 1942, § 670] on account of the separate estate of the surviving spouse are to be taken out of the half of the total estate to which the surviving spouse is limited by Code 1942, § 668. Davis v. Miller, 202 Miss. 880, 32 So. 2d 871, 1947 Miss. LEXIS 351 (Miss. 1947).

The widow is not made a creditor of the estate by this section [Code 1942, § 670] where she has elected to take against her husband's will. Gordon v. James, 86 Miss. 719, 39 So. 18, 1905 Miss. LEXIS 93 (Miss. 1905).

2. Institution of valuation proceedings.

Beneficiaries under will desiring to have widow's separate estate counted against her apportionment should file petition stating facts, but the petition cannot be heard until 12 months after probate and before final settlement. Simpson v. Simpson, 120 Miss. 197, 82 So. 3, 1919 Miss. LEXIS 77 (Miss. 1919).

Proceeding to appoint commissioner may be instituted by executor or any person interested, but all interested persons must be made parties. Jones v. Jones, 94 Miss. 460, 49 So. 115, 1909 Miss. LEXIS 367 (Miss. 1909).

3. What includible in survivor's separate estate.

Contention by the heirs at law of widow

that joint and survivorship bank accounts in the name of the widow and the testator, who predeceased widow, were not properly a part of the widow's separate estate, was rejected. Carter v. Evans, 230 Miss. 803, 94 So. 2d 237, 1957 Miss. LEXIS 425 (Miss. 1957).

Proceeds of insurance which widow took as sole heir of husband were not part of her separate estate. O'Reily v. Laughlin, 92 Miss. 1, 45 So. 19, 1907 Miss. LEXIS 7 (Miss. 1907).

4. What includible in deceased's estate.

Contention by the heirs at law of widow that joint and survivorship bank accounts in the name of the widow and the testator, who predeceased widow, were not properly a part of the widow's separate estate, was rejected. Carter v. Evans, 230 Miss. 803, 94 So. 2d 237, 1957 Miss. LEXIS 425 (Miss. 1957).

Where the testator prior to her marriage to appellant had signed and acknowledged a warranty deed conveying her farm to her niece, reserving to herself a life estate, and handed the deed to her brother with the instructions to keep and deliver it to the niece upon the testator's death, there was a valid delivery from the testator to the niece, so that the value of the farm did not form a part of the testator's estate. Myers v. Laird, 230 Miss. 675, 93 So. 2d 828, 1957 Miss. LEXIS 409 (Miss. 1957).

Where a number of Series E Savings Bonds were payable jointly to the wife or some third persons designated therein, the bonds, upon the wife's death, were not a portion of her estate, since the surviving co-owners of the bonds became the sole and absolute owners. Myers v. Laird, 230 Miss. 675, 93 So. 2d 828, 1957 Miss. LEXIS 409 (Miss. 1957).

Where a certificate of deposit in the bank was payable to the wife or the wife's brother, upon the death of the wife, this deposit became the property of the brother, and was no portion of the wife's estate. Myers v. Laird, 230 Miss. 675, 93 So. 2d 828, 1957 Miss. LEXIS 409 (Miss. 1957).

5. Particular applications.

In an action between the beneficiaries under testator's will and the heirs of his widow, who had renounced the will, the chancellor, after finding the testator's net estate and the widow's net estate at the time of testator's death, correctly determined that the estate should be distributed according to this section [Code 1942, § 670], and that the widow's heirs were entitled to the difference between one half of the net estate of the testator and the net value of widow's estate. Carter v. Evans, 230 Miss. 803, 94 So. 2d 237, 1957 Miss. LEXIS 425 (Miss. 1957).

In a proceeding to determine whether a surviving husband's separate estate was equal in value to one half portion of his deceased wife's estate, the chancellor properly found that the husband had not conveyed his one half interest in certain Louisiana property to his children prior to death of testator, but that he had given his children the property by an act of donation after the event; thus, the value of the husband's one half interest in the Louisiana property, less one half of the outstanding mortgage loan, should have been included in the valuation of his separate estate along with the value of his personal property, and he was precluded by this section [Code 1942, § 670] from renouncing his wife's will, which made no provision for him, since his property at the time of her death was more than equal in value to what would have been his lawful portion of her estate. Myers v. Laird, 230 Miss. 675, 93 So. 2d 828, 1957 Miss. LEXIS 409 (Miss. 1957).

Where a testatrix had willed an estate of the value of $90,000, and surviving husband had a separate estate worth $30,000, upon renunciation the surviving husband was entitled only to have the value of his separate estate deducted from one-half of the value of testatrix's estate, leaving the sum of $15,000 as a deficiency to be made up for the surviving husband. Davis v. Miller, 202 Miss. 880, 32 So. 2d 871, 1947 Miss. LEXIS 351 (Miss. 1947).

RESEARCH REFERENCES

ALR.

Waiver or abandonment of, or estoppel to assert, prior renunciation of, or election to take against, spouse's will. 29 A.L.R.2d 227.

What passes under provision of will that spouse shall take share of estate allowed or provided by law, or a provision of similar import. 36 A.L.R.2d 147.

Who must bear loss occasioned by election against will. 36 A.L.R.2d 291.

What constitutes transfer outside the will precluding surviving spouse from electing statutory share under Uniform Probate Code § 2-301. 11 A.L.R.4th 1213.

Surviving spouse's right to marital share as affected by valid contract to convey by will. 85 A.L.R.4th 418.

Am. Jur.

25 Am. Jur. Pl & Pr Forms (Rev), Wills, Forms 161 et seq. (election whether to take under will).

Law Reviews.

Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March, 1982.

§ 91-5-31. Repealed.

Repealed by Laws, 1993, ch. 342, § 1, eff from and after passage (approved March 10, 1993).

§ 91-5-31. [Codes, 1892, § 4501; 1906, § 5091; Hemingway's 1917, § 3379; 1930, § 3565; 1942, § 671; Laws, 1940, ch. 318; Laws, 1988, ch. 489, § 1]

Editor's Notes — Former § 91-5-31 was a statute of mortmain, and provided certain restrictions on how a person could, by will, bequeath or devise his assets to charitable, religious, educational or civil institutions. Similar provisions are contained in Miss. Const., Art. 14, § 270.

JUDICIAL DECISIONS

1. In general.

The legislature intended the repeal of the statute to be effective as of its date of passage in that there is no savings clause included. Hudson v. Moon, 732 So. 2d 927, 1999 Miss. LEXIS 53 (Miss. 1999).

Where heirs at law had a vested remainder, subject to defeasance by the exercise of a power of disposition by the defendant foundation, but the foundation failed to exercise such power, the subsequent repeal of the statute did not affect the heirs' rights and they maintained rights in the land not disposed of by the foundation. Hudson v. Moon, 732 So. 2d 927, 1999 Miss. LEXIS 53 (Miss. 1999).

§ 91-5-33. Person who kills another not to take under his will.

If any person shall wilfully cause or procure the death of another in any manner, he shall not take the property, or any part thereof, real or personal, of such other under any will, testament, or codicil. Any devise to such person shall be void and, as to the property so devised, the decedent shall be deemed to have died intestate.

This shall not defeat the title of a bona fide purchaser for value of the property so devised, who acquired the same after one year from the probation of the will without notice that the person to whom the same was devised so caused or procured the death of the testator.

HISTORY: Codes, 1892, § 4502; 1906, § 5092; Hemingway's 1917, § 3380; 1930, § 3566; 1942, § 672.

Cross References — Inheritance by killer from his victim, see § 91-1-25.

JUDICIAL DECISIONS

1. In general.

Public Employees' Retirement System (PERS) Board of Trustees did not err in denying the claim a deceased PERS member's sister because the member's husband was entitled to lifetime spousal survivor benefits, notwithstanding the fact he was convicted of aggravated driving under the influence in connection with the member's death; the husband did not willfully cause the member's death under the slayer statutes, and he had been married to the member for over one year. Hicks v. Public Employees' Ret. Sys. of Miss., 282 So. 3d 1204, 2019 Miss. App. LEXIS 479 (Miss. Ct. App. 2019).

Mississippi Supreme Court has applied the same statutory principles of the "slayer statutes" where the property at issue was life insurance proceeds rather than an inheritance; the same principles would apply to Public Employees' Retirement System benefits for the strong public policy against allowing someone to profit from involvement in the death of another. Hicks v. Public Employees' Ret. Sys. of Miss., 282 So. 3d 1204, 2019 Miss. App. LEXIS 479 (Miss. Ct. App. 2019).

This section requires a finding of willful conduct to preclude a person from inheriting from his or her victim. Because an insane person lacks the requisite ability willfully to kill another person, the Slayer Statute is not applicable in cases where the killer is determined to be insane at the time of the killing. Armstrong v. Armstrong (In re Estate of Armstrong), 170 So. 3d 510, 2015 Miss. LEXIS 378 (Miss. 2015).

Evidence of a guilty plea to a charge of manslaughter is not sufficient, standing alone, to enable a fact finder to conclude that one is prohibited from inheriting under §§ 91-1-25 and 91-5-33. Hood v. VanDevender, 661 So. 2d 198, 1995 Miss. LEXIS 456 (Miss. 1995).

Equitable estoppel does not and cannot authorize the exercise of a personal right which terminates with the death of a spouse, and the fact that a husband shot and killed his wife, an act which would have precluded his inheriting her estate, is no justification for permitting the deceased wife's personal representatives to renounce the husband's will, an act which by law can only be invoked personally by a surviving spouse. Jenkins v. Borodofsky, 211 So. 2d 874, 1968 Miss. LEXIS 1288 (Miss. 1968).

RESEARCH REFERENCES

ALR.

Felonious killing of testator as affecting slayer's rights as beneficiary under will. 36 A.L.R.2d 960.

Felonious killing of ancestor as affecting intestate succession. 39 A.L.R.2d 477.

Homicide as precluding taking under will or by intestacy. 25 A.L.R.4th 787.

Am. Jur.

79 Am. Jur. 2d, Wills § 148.

CJS.

95 C.J.S., Wills §§ 99-102.

Law Reviews.

1978 Mississippi Supreme Court Review: Miscellaneous. 50 Miss. L. J. 165, March, 1979.

§ 91-5-35. Will devising real property admitted to probate as muniment of title only; petition signature; rights of interested parties unaffected.

(1) When a person dies testate owning at the time of death real property in the State of Mississippi and his will purports to devise such realty, then said will may be admitted to probate, as a muniment of title only, by petition signed and sworn, without the necessity of administration or the appointment of an executor or administrator with the will annexed, provided it be shown by said petition that:

(a) The value of the decedent's probate estate in the State of Mississippi at the time of his or her death, exclusive of any interest in real property and exempt property set forth in Section 91-7-117, did not exceed the sum set forth in Section 91-7-322; and

(b) All known debts of the decedent and his estate have been paid, including estate and income taxes, if any.

(2) The petition shall be signed and sworn by the personal representative, including (a) an executor, (b) an administrator with the will annexed, or (c) other personal representative serving in a foreign jurisdiction. If there is no such serving executor, administrator with the will annexed, or other personal representative, then it shall be signed and sworn by (i) the spouse of the decedent, if then living, and (ii) the devisees of the Mississippi real property, whether specific or residuary, but excluding persons holding mere contingent remainder interests in the real property.

(3) The petition may be signed for and on behalf of the spouse of the decedent, or a beneficiary under the will of the decedent, by a person acting in a representative capacity in accordance with Section 91-8-303.

(4) The probate of a will under this section shall in no way affect the rights of any interested party to petition for a formal administration of the estate or to contest the will as provided by Section 91-7-23, Mississippi Code of 1972, or the right of anyone desiring to contest a will presented for probate as provided by Section 91-7-21, or as otherwise provided by law.

(5) This section shall apply to wills admitted to probate from and after July 1, 2020, notwithstanding that the testator or testatrix may have died on or before July 1, 2020.

HISTORY: Laws, 1983, ch. 385; Laws, 1984, ch. 467; Laws, 1989, ch. 582, § 1, eff from and after July 1, 1989; Laws, 2020, ch. 343, § 2, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment in (1), deleted "to by all beneficiaries named in the will, and the spouse of such deceased person if such spouse is not named as a beneficiary in the will" following "by petition signed and sworn"; in (1)(a), substituted "probate estate" for "personal estate," inserted "and exempt property set forth in Section 91-7-117" and substituted "sum set forth in Section 97-7-322" for "sum of Ten Thousand Dollars ($10,000.00), exclusive of exempt property"; rewrote (2), which read: "If any beneficiary to any will admitted to probate pursuant to this section shall be under a disability, then the petition may be signed for him by one of his parents or his legal guardian"; added (3); redesignated former (3) and (4) as (4) and (5); and in (5), substituted "July 1, 2020" for "July 1, 1984" both times it appears.

CHAPTER 7.

EXECUTORS AND ADMINISTRATORS

General Provisions. 91-7-1
Nonresident Decedents. 91-7-501

GENERAL PROVISIONS

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§ 91-7-1. Venue of proof of wills.

Wills shall be proved in and letters testamentary thereon granted by the chancery court of the county in which the testator had a fixed place of residence. If he had no fixed place of residence and land be devised in the will, it shall be proved in and letters granted by the chancery court of the county where the land, or some part thereof, is situated.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (24); 1857, ch. 60, art. 42; 1871, § 1098; 1880, § 1960; 1892, § 1813; 1906, § 1988; Hemingway's 1917, § 1653; 1930, § 1599; 1942, § 495; Laws, 2020, ch. 343, § 3, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment deleted the former last sentence, which read: "If the testator had no fixed place of residence and personal property only be disposed of by the will, it may be proved in and letters granted by the chancery court of the county where the testator died, or of the county in which some part of the property may be."

Cross References — Definition of "will," see § 1-3-61.

Jurisdiction of chancery court over matters of administration of estates, see § 9-5-83.

Wills and testaments generally, see § 91-5-1 et seq.

Probate of will as prima facie evidence of its validity, see § 91-7-27.

Grant of letters of administration, see § 91-7-63.

Applicability of Mississippi Rules of Civil Procedure to proceedings which are subject to the provisions of Title 91, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

Forum county pursuant to Miss. Const. Art. VI, § 159 had full jurisdiction over admission of the testator's will to probate. Indeed, under that constitutional provision it had full jurisdiction over matters testamentary and of administration, and the forum county under Miss. Code Ann. § 91-7-1 was the proper location to hear probate matters concerning the testator's estate because the testator at the time of his death had a fixed residence in the forum county. Ellzey v. McCormick, 17 So. 3d 583, 2009 Miss. App. LEXIS 118 (Miss. Ct. App. 2009).

Hancock County was the proper venue

to admit a nondomiciliary's will where the decedent, after living in the county for more than 30 years, had at least acquired some clothing or other personal property in the county in which he died. In re Estate of Kelly v. Cuevas, 951 So. 2d 564, 2005 Miss. App. LEXIS 995 (Miss. Ct. App. 2005).

As decedent's will was not a foreign will, but a domestic will, sounding in Mississippi law, executed by the decedent in Mississippi where he had resided in a residential care facility for 25 years, and where he died, the trial court properly determined that it had subject matter jurisdiction to probate the will under Miss. Code Ann. § 91-7-1. Estate of Kelly v. Cuevas, 951 So. 2d 543, 2007 Miss. LEXIS 18 (Miss. 2007).

If the testator had no fixed place of residence, and only personal property is to be disposed of by the will, it may be proved in, and letters granted by, the chancery court of the county where the testator died, or the county in which some part of the property may be. Halford v. Hines, 223 Miss. 786, 79 So. 2d 264, 1955 Miss. LEXIS 439 (Miss. 1955).

Where it was shown that the testator had lived for seventy years on the farm, and when he moved to a town did not move any of his household effects and a witness testified that the testator was coming back home, the evidence was sufficient to support the finding that the testator had not changed his residence. Halford v. Hines, 223 Miss. 786, 79 So. 2d 264, 1955 Miss. LEXIS 439 (Miss. 1955).

Domestic will when probated and recorded in county in which testator resided at time of death constituted notice throughout state to subsequent mortgagee of land in Mississippi devised by will, without necessity of recording will in county wherein land was situated. Federal Land Bank v. Newsom, 175 Miss. 114, 161 So. 864, 166 So. 345, 1935 Miss. LEXIS 27 (Miss. 1935).

Probate of will is a proceeding in rem having no effect on property outside of jurisdiction where will probated. Woodville v. Pizzati, 119 Miss. 442, 81 So. 127, 1919 Miss. LEXIS 22 (Miss. 1919).

RESEARCH REFERENCES

ALR.

Adverse interest or position as qualification for appointment of administrator, executor, or other personal representative. 11 A.L.R.4th 638.

Am. Jur.

79 Am. Jur. 2d, Wills § 732 et seq.

CJS.

95 C.J.S., Wills § 549 et seq.

Law Reviews.

Weems and Evans, Mississippi law of intestate succession, wills, and administration and the proposed Mississippi Uniform Probate Code: a comparative analysis. 62 Miss. L. J. 1, Spring, 1992.

Practice References.

Bickel and Flannery, Living Trusts: Forms and Practice (Matthew Bender).

Burke, Friel, and Gagliardi, Modern Estate Planning, Second Edition (Matthew Bender).

Christensen, International Estate Planning, Second Edition (Matthew Bender).

Mobley, Robinson and Hedrick, Pritchard on the Law of Wills and Administration of Estates, Seventh Edition (Michie).

Planning for Large Estates (Matthew Bender).

Schoenblum, Estate Planning Forms and Clauses (Matthew Bender).

Wyatt, Trust Administration and Taxation (Matthew Bender).

Estate Planning Package —LexisNexis Folio (LexisNexis).

Murphy's Will Clauses: Annotations and Forms with Tax Effects (Matthew Bender).

§ 91-7-3. By whom presented.

When any last will and testament is exhibited to be proved, the court may take the probate thereof, and any one interested in a will may propound it for probate. Summons may be issued by the clerk for the subscribing witnesses, or for other witnesses, to be examined as to such will.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (29); 1857, ch. 60, art. 43; 1871, § 1099; 1880, §§ 1961, 1992; 1892, § 1814; 1906, § 1989; Hemingway's 1917, § 1654; 1930, § 1600; 1942, § 496.

JUDICIAL DECISIONS

1. In general.

The probation of 1980 will in common form and its admission to probate created prima facie evidence that the will was valid. Trotter v. Trotter, 490 So. 2d 827, 1986 Miss. LEXIS 2485 (Miss. 1986).

The probate of a will in common form is not a final adjudication of its validity but is an "incipient step" necessary to enable the court to proceed to carry the will into execution, and it is not conclusive against heirs and distributees, and if they desire to contest the validity of the will this shall be done by an issue devisavit vel non. Perry v. Aldrich, 251 Miss. 429, 169 So. 2d 786, 1964 Miss. LEXIS 361 (Miss. 1964).

Where a niece and two nephews had recited in a sworn petition for letters of administration that their aunt had died intestate some five years previously, although at the time admittedly all knew of the existence of the aunt's will, and the estate had been administered and discharged, the niece was estopped 21 years later from offering the aunt's will to probate. Logan v. Smith, 229 Miss. 513, 91 So. 2d 707, 1956 Miss. LEXIS 633 (Miss. 1956).

If from any cause the original will cannot be had, secondary evidence of its contents is admissible, and it may be probated in that form. Pratt v. Hargraves, 77 Miss. 892, 28 So. 722, 1900 Miss. LEXIS 52 (Miss. 1900).

The refusal to probate a will in common form because of insufficient proof does not preclude the subsequent probate on sufficient evidence. Martin v. Perkins, 56 Miss. 204, 1878 Miss. LEXIS 60 (Miss. 1878).

RESEARCH REFERENCES

ALR.

Probate where two or more testamentary documents, bearing the same date or undated, are proffered. 17 A.L.R.3d 603.

What circumstances excuse failure to submit will for probate within time limit set by statute. 17 A.L.R.3d 1361.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 386.

79 Am. Jur. 2d, Wills § 760 et seq.

CJS.

95 C.J.S., Wills § 489.

§ 91-7-5. Production of will compelled.

The chancery court of the proper county, on being informed that any person has the last will and testament of a testator or testatrix, may compel such person to produce it.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (22); 1857, ch. 60, art. 47; 1871, § 1103; 1880, § 1977; 1892, § 1830; 1906, § 2005; Hemingway's 1917, § 1670; 1930, § 1601; 1942, § 497.

RESEARCH REFERENCES

ALR.
Sufficiency of evidence to support grant of summary judgment in will probate or contest proceedings. 53 A.L.R.4th 561.

Am. Jur.
79 Am. Jur. 2d, Wills § 714 et seq.

CJS.
95 C.J.S., Wills §§ 474-477, 710.

§ 91-7-7. Proof of due execution of will.

The due execution of the will, whether heretofore or hereafter executed, must be proved by at least one (1) of the subscribing witnesses, if alive and competent to testify. If none of the subscribing witnesses can be produced to prove the execution of the will, it may be established by proving the handwriting of a testator and of the subscribing witnesses to the will, or of some of them. The execution of the will may be proved by affidavits of subscribing witnesses. The affidavits may be annexed to the will or may be a part of the will, and shall state the address of each subscribing witness. Such affidavits may be signed at the time that the will is executed.

HISTORY: Codes, 1871, § 1117; 1880, § 1963; 1892, § 1815; 1906, § 1991; Hemingway's 1917, § 1656; 1930, § 1602; 1942, § 498; Laws, 1946, ch. 335, § 1; Laws, 1992, ch. 383, § 1, eff from and after July 1, 1992.

Cross References — Number of witnesses of will required, see § 91-5-1.
Nuncupative wills, see § 91-5-15.
Wills of members of armed forces and mariners, see § 91-5-21.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Resort to secondary evidence.

1. In general.

A record of probate in common form which does not contain the affidavit of a subscribing witness or other testimony in writing proving the validity of the will, and no explanation of the absence of such proof, is not prima facie evidence of the validity of the will. Gibson v. Jones, 238 Miss. 186, 117 So. 2d 879, 1960 Miss. LEXIS 394 (Miss. 1960).

In a will contest where proponents introduced a record of probate of will in common form, it was not necessary that they go further and make proof of will by having one of subscribing witnesses present to testify. Bearden v. Gibson, 215 Miss. 218, 60 So. 2d 655, 1952 Miss. LEXIS 555 (Miss. 1952).

This section [Code 1942, § 498] does not require that the execution of the will be proved by more than one of the subscribing witnesses, and where one of two subscribing witnesses testifies to every fact necessary to the due execution of a lost will, together with evidence that the testator made corroborative statements up to the time of her death, the proponent was held to have met the burden of proof, notwithstanding that the other subscribing witnesses denied his attestation or presence at the execution thereof. Warren v. Sidney's Estate, 183 Miss. 669, 184 So. 806, 1938 Miss. LEXIS 281 (Miss. 1938).

Evidence of subscribing witness that testatrix told him that instrument was her will, that she had signed it and wanted him to sign it as a witness, and that he did so in her presence, and testimony of other witness who did not sign in presence of other subscribing witness and was not present when other witness signed that testatrix told him instrument was her will and requested him to sign it as a witness, was sufficient to authorize admission of will to probate in solemn form. Austin v. Patrick, 179 Miss. 718, 176 So. 714, 1937 Miss. LEXIS 74 (Miss. 1937).

If contestant introduces attesting witness, failure of proponents to do so is corrected. Ward v. Ward, 124 Miss. 697, 87 So. 153, 1920 Miss. LEXIS 559 (Miss. 1920).

2. Resort to secondary evidence.

The decedent executed the decedent's will in conformity with the law, while the proponent of the decedent's will authenticated not only the decedent's signature but also the signature of one of the attesting witnesses. Because the proponent of the will proved the authenticity of some of the signatures on the decedent's will, including the decedent's signature, the will should have been admitted to probate as the proponent met the proponent's burden to prove the due execution of the will. In re Will of Beard, — So. 3d —, 2021 Miss. App. LEXIS 214 (Miss. Ct. App. May 18, 2021).

The decedent executed the decedent's will in conformity with the law, while the proponent of the decedent's will authenticated not only the decedent's signature but also the signature of one of the attesting witnesses. Because the proponent of the will proved the authenticity of some of the signatures on the decedent's will, including the decedent's signature, the will should have been admitted to probate as the proponent met the proponent's burden to prove the due execution of the will. In re Will of Beard, — So. 3d —, 2021 Miss. App. LEXIS 214 (Miss. Ct. App. May 18, 2021).

The trial court properly set aside a jury verdict finding that the decedent's lost or destroyed will had been properly executed where there was neither direct nor secondary evidence that the alleged lost or destroyed will was ever signed, witnessed, and executed according to law. Gaston v. Gaston, 358 So. 2d 376, 1978 Miss. LEXIS 2527 (Miss. 1978).

When the witnesses to a lost will are dead, their attestation may be proved by secondary evidence. Estate of Willis v. Willis, 207 So. 2d 348, 1968 Miss. LEXIS 1609 (Miss. 1968).

Although under Code 1942, § 498 the testimony of only one living witness is sufficient to establish a will's proper execution, proof of two signatures of witnesses is required to prove due execution where the witnesses to a will are deceased. Estate of Willis v. Willis, 207 So. 2d 348, 1968 Miss. LEXIS 1609 (Miss. 1968).

Proof of the due execution of the will may, if necessary, be made by others than subscribing witnesses, although subscribing witnesses must be produced, if possible. Warren v. Sidney's Estate, 183 Miss. 669, 184 So. 806, 1938 Miss. LEXIS 281 (Miss. 1938).

Where subscribing witness will and can prove facts as to execution of will, secondary evidence cannot be used until they have been called or produced. Helm v. Sheeks, 116 Miss. 726, 77 So. 820, 1917 Miss. LEXIS 366 (Miss. 1917); Warren v. Sidney's Estate, 183 Miss. 669, 184 So. 806, 1938 Miss. LEXIS 281 (Miss. 1938).

RESEARCH REFERENCES

ALR.

"Attestation" or "witnessing" of will, required by statute, as including witnesses' subscription. 45 A.L.R.2d 1365.

Failure of attesting witness to write or state place of residence as affecting will. 55 A.L.R.2d 1053.

Requirement that holographic will, or its material provisions, be entirely in testator's handwriting as affected by appearance of some printed or written matter not in testator's handwriting. 37 A.L.R.4th 528.

Sufficiency of evidence to support grant of summary judgment in will probate or contest proceedings. 53 A.L.R.4th 561.

Am. Jur.
80 Am. Jur. 2d, Wills § 852 et seq., 859 et seq.

1 Am. Jur. Proof of Facts 2, Mistake in the Inducement in Wills, § 5 et seq. (proof of mistake in the inducement).

24 Am. Jur. Proof of Facts 3d 667, Identification of Handprinting and Numerals.

25 Am. Jur. Proof of Facts 3d 637, Illegible Signatures and Writing in Litigation.

CJS.
95 C.J.S., Wills §§ 637, 638, 658-665.

§ 91-7-9. Affidavit of subscribing witness receivable.

The affidavit of any subscribing witness to a will, made before and certified by any officer in the state competent to administer oaths, shall be received as a substitute for the personal attendance of the affiant to prove the will where there is no contest about it.

HISTORY: Codes, 1880, § 1964; 1892, § 1817; 1906, § 1992; Hemingway's 1917, § 1657; 1930, § 1603; 1942, § 499.

Editor's Notes — Laws of 1974, ch. 375, § 1, amended this section by adding a second paragraph. At the direction of the State Attorney General, the amendment was not executed, and instead, the second paragraph was designated as new code § 91-7-10.

JUDICIAL DECISIONS

1. In general.
As the will was not contested, the affidavits of two attesting witnesses that the decedent was of sound and disposing mind at the time he executed his will was sufficient to establish the will was properly executed. In re Estate of Kelly v. Cuevas, 951 So. 2d 564, 2005 Miss. App. LEXIS 995 (Miss. Ct. App. 2005).

Under Code 1942, § 499 where there was no will contest, the affidavit of the subscribing witness constituted testimony of the attesting witness for the proponent of the will. Chapman v. Chapman, 264 So. 2d 395, 1972 Miss. LEXIS 1357 (Miss. 1972).

The logical basis of the rule that subscribing witnesses to a will that has been admitted to probate in common form should be produced is that the affidavit of proof of due execution of a will authorized by statute is an ex parte statement by the subscribing witnesses. Chapman v. Chapman, 264 So. 2d 395, 1972 Miss. LEXIS 1357 (Miss. 1972).

A person contesting a will should be allowed to examine the subscribing witnesses to the will as to all matters relevant to the will's execution and to inquire into surrounding facts and circumstances so that the court may determine if the will was properly signed and attested, if attestation be required, and if the testator was mentally competent and free of undue influence. Chapman v. Chapman, 264 So. 2d 395, 1972 Miss. LEXIS 1357 (Miss. 1972).

The contestant of a will was entitled to impeach the testimony of subscribing witnesses who were called by the contestant as adverse witnesses, in an affidavit which was the basis for admission of the will to probate, even if such impeachment was made by the witnesses' own testimony. Chapman v. Chapman, 264 So. 2d 395, 1972 Miss. LEXIS 1357 (Miss. 1972).

A record of probate in common form which does not contain the affidavit of a subscribing witness or other testimony in writing proving the validity of the will, and no explanation of the absence of such proof, is not prima facie evidence of the validity of the will. Gibson v. Jones, 238 Miss. 186, 117 So. 2d 879, 1960 Miss. LEXIS 394 (Miss. 1960).

In a will contest where proponents introduced a record of probate of will in common form, it was not necessary that they go further and make proof of will by having one of subscribing witnesses present to testify. Bearden v. Gibson, 215 Miss. 218, 60 So. 2d 655, 1952 Miss. LEXIS 555 (Miss. 1952).

In a will contest after probate, proponents of a will, executed in Texas, were not required to make proof of the validity of the will by having the subscribing witnesses present to testify, or their testimony in the form of depositions, and a prima facie case of the validity of the will was properly made out by introducing the probate of the will in common form by the affidavits of the subscribing witnesses who resided in Texas. Hilton v. Johnson, 194 Miss. 671, 12 So. 2d 524, 1943 Miss. LEXIS 77 (Miss. 1943).

The affidavits of two subscribing witnesses to a will were sufficient for the probate thereof in common form. Austin v. Patrick, 179 Miss. 718, 176 So. 714, 1937 Miss. LEXIS 74 (Miss. 1937).

§ 91-7-10. Affidavits may be used to authenticate holographic wills or codicils.

Where there is not contest about it, a holographic will or codicil may be proved at the time of presentment for probate by the affidavits, made before an officer in the state authorized to administer oaths, of at least two (2) persons, in no wise interested in the estate of the testator or testatrix, attesting to the authenticity of the will or codicil and the competency of the testator or testatrix to make testamentary disposition of his or her property; provided, however, that such affiants shall be persons familiar with the handwriting and signature of the testator or testatrix, and the affidavits so presented shall contain statements made on the personal knowledge of such affiants attesting that such handwriting and such signature are genuine and were made and done by the testator or testatrix; and in such case the affidavits made and presented in conformity herewith may be received as a substitute for the personal attendance of witnesses to prove such will or codicil.

HISTORY: Laws, 1974, ch. 375, § 1, eff from and after passage (approved March 19, 1974).

Editor's Notes — Laws of 1974, ch. 375, § 1, amended § 91-7-9 by adding a second paragraph. At the direction of the State Attorney General, the second paragraph was designated as new code § 91-7-10.

RESEARCH REFERENCES

ALR.

Competency of interested witnesses to testify to signature or handwriting of deceased. 13 A.L.R.3d 404.

Am. Jur.

79 Am. Jur. 2d, Wills § 605.

25 Am. Jur. Pl & Pr Forms (Rev), Wills, Form 55 (petition or application to probate holographic will).

CJS.

95 C.J.S., Wills §§ 330-339, 478-481, 679-682, 734, 735.

§ 91-7-11. Testimony of absent witness.

When any will shall be exhibited for probate and any witness who attested the will shall reside out of the state or be not found, either of the following methods may be used to prove the execution of the will, to wit:

(a) A commission may issue to take his or her deposition, as in other cases of nonresident witnesses, to which the will shall be attached. Before such original will shall be sent abroad for proof, the clerk shall make and certify to a true copy thereof and file the copy in his office, and such certified true copy shall have the same legal force and effect of the original will and may be substituted for the original will should the original will be lost. Provided, however, where there is no contest, the affidavit of such nonresident subscribing witness may be made before any officer competent to administer oaths in the state where such nonresident witness may be found.

(b) Or, in lieu of sending the original will abroad for such proof, the clerk may have made a photostatic copy of said original will and certify to same as being a photostatic copy of said original will and send said certified photostatic copy of said original will abroad, instead of the original will; and in which case, the clerk shall file the original will in his office.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (28); 1857, ch. 60, art. 44; 1871, § 1100; 1880, § 1972; 1892, § 1819; 1906, § 1994; Hemingway's 1917, § 1659; 1930, § 1604; 1942, § 500; Laws, 1954, ch. 215; Laws, 1966, ch. 322, § 1, eff from and after passage (approved May 20, 1966).

§ 91-7-13. Testimony on probating will reduced to writing.

If the will shall appear to have been duly executed, it shall be admitted to probate. All testimony taken in probating it shall be reduced to writing and filed and carefully preserved in the clerk's office.

HISTORY: Codes, 1880, § 1965; 1892, § 1818; 1906, § 1993; Hemingway's 1917, § 1658; 1930, § 1605; 1942, § 501.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 501] and Code 1942, § 507 must be read together. Gibson v. Jones, 238 Miss. 186, 117 So. 2d 879, 1960 Miss. LEXIS 394 (Miss. 1960).

A record of probate in common form which fails to show compliance with this section [Code 1942, § 501] does not constitute prima facie evidence of the validity of the will. Gibson v. Jones, 238 Miss. 186, 117 So. 2d 879, 1960 Miss. LEXIS 394 (Miss. 1960).

§ 91-7-15. Will executed by person in armed forces — additional manner of proof.

In addition to the manner in which wills may be proved and admitted to probate in the State of Mississippi under other laws, any will executed by any member of the armed forces of the United States during the Korean War, or any other war, may be proved and admitted to probate, and letters testamentary thereon granted, by the chancery court or the chancellor in vacation of the county in which such testator lived when he became a member of such armed forces, or by the chancery court or the chancellor in vacation of the county in which such testator owned land at the time of his death, on the affidavit of any reliable person or persons sufficient to satisfy the chancellor that the testator is dead, that the writing propounded for probate was signed by the testator as his last will and testament, that the affidavit or testimony of the subscribing witnesses to such will cannot reasonably be obtained, and that there is good reason for such will to be then probated.

HISTORY: Codes, 1942, § 501-01; Laws, 1944, ch. 167, § 1; Laws, 1952, ch. 254.

RESEARCH REFERENCES

Am. Jur.

25 Am. Jur. Proof of Facts 3d 637, Illegible Signatures and Writing in Litigation.

§ 91-7-17. Rejection of will not binding.

The rejection of an ex parte application to probate a will shall not bind any one or extinguish any right.

HISTORY: Codes, 1880, § 1966; 1892, § 1920; 1906, § 1995; Hemingway's 1917, § 1660; 1930, § 1606; 1942, § 502.

§ 91-7-19. All interested may be made parties.

Any proponent of a will for probate may, in the first instance, make all interested persons parties to his application to probate the will, and in such case all who are made parties shall be concluded by the probate of the will. At the request of either party to such proceeding, an issue shall be made up and tried by a jury as to whether or not the writing propounded be the will of the alleged testator.

HISTORY: Codes, 1880, § 1967; 1892, § 1821; 1906, § 1996; Hemingway's 1917, § 1661; 1930, § 1607; 1942, § 503.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Interested parties.
3. Conclusiveness of decree.

1. In general.

Daughter would not forfeit her share of a decedent's estate because sufficient evidence existed that the daughter acted in good faith when submitting the second codicil; even though the jury found the second codicil invalid, that decision alone did not mean that it was submitted in bad faith or without probable cause, and under the statute the jury could not ever reach that question. Estate of Roosa v. Roosa, — So. 3d —, 2019 Miss. App. LEXIS 163 (Miss. Ct. App. Apr. 23, 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 477 (Miss. 2019), cert. denied, 283 So. 3d 733, 2019 Miss. LEXIS 412 (Miss. 2019).

Court of appeals declined to remand for a jury to determine whether a decedent's daughter exhibited good faith in probating the second codicil because the issue was not within the jury's province under the statute. Estate of Roosa v. Roosa, — So. 3d —, 2019 Miss. App. LEXIS 163 (Miss. Ct. App. Apr. 23, 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 477 (Miss. 2019), cert. denied, 283 So. 3d 733, 2019 Miss. LEXIS 412 (Miss. 2019).

Trial court did not err in granting beneficiaries summary judgment in a will contest because they established a prima facie case that the will was valid and that the testator possessed testamentary capacity, and the son failed to rebut the prima facie case with any summary-judgment evidence that there was a genuine issue for trial; the will was admitted to probate, and the beneficiaries attached affidavits of individuals that testified as to the testator's mental capacity. Froemel v. Estate of Froemel, 248 So. 3d 876, 2018 Miss. App. LEXIS 230 (Miss. Ct. App. 2018).

Chancellor erred in holding that Miss. Code Ann. § 91-7-33 absolutely barred the sister from initially proving a lost foreign will in Mississippi where the will disposed of property in this state. Given the existence of genuine issues of material fact regarding the validity of the testator's will, the chancellor should have proceeded with the will contest and impaneled a jury to decide the will's validity. Watt v. Cobb (In re Estate of High), 19 So. 3d 1282, 2009 Miss. App. LEXIS 743 (Miss. Ct. App. 2009).

Summary judgment is properly granted where no genuine issues of material fact have been presented although question of will or no will is primary issue in will contest and either party to will contest has automatic right to jury trial. Gallagher v. Warden, 507 So. 2d 27 (Miss. 1987).

Evidence that testator of advanced years living in nursing home was dependent upon beneficiary to some degree is insufficient basis for finding of confidential relationship resulting in will being product of undue influence where there is no proof that testator looked to beneficiary to care for personal needs, to tend to him, or to handle his affairs. In re Will & Estate of Varvaris, 477 So. 2d 273, 1985 Miss. LEXIS 2256 (Miss. 1985).

Party who desires jury to try issue of devisavit vel non is under duty to specifically request jury before hearing on matter. In re Will & Estate of Varvaris, 477 So. 2d 273, 1985 Miss. LEXIS 2256 (Miss. 1985).

In a probate action the chancery court properly overruled a motion to exclude the jury on the issue involving probate of a 1961 will, where the mover's pleading involving a 1979 will raised the issue of revocation of the 1961 will, and where the question of revocation was a proper question for the jury. Deposit Guaranty Nat'l Bank v. Cotten, 420 So. 2d 242, 1982 Miss. LEXIS 2203 (Miss. 1982).

Although the evidence was conflicting, jury's finding that an alleged holographic will was not in the handwriting of the deceased would not be disturbed by the supreme court where there was ample evidence to warrant that conclusion, and the chancellor's decree had upheld a jury's verdict. In re Estate of Rumley, 234 Miss. 490, 106 So. 2d 678, 1958 Miss. LEXIS 522 (Miss. 1958).

It was not required in a probate proceeding that an issue devisavit vel non be tried to a jury. Darby v. Arrington, 194 Miss. 123, 11 So. 2d 220, 1942 Miss. LEXIS 170 (Miss. 1942).

Where cousins of a testatrix's heir, who would inherit the estate if the will, under which the heir would receive a life estate, should be set aside, were precluded from prosecuting an appeal from a decree validating the will, upon the death of the heir pending the appeal, since the proceedings involved the only persons then interested, and the cousins were not beneficiaries, his administrator, in his naked right as administrator of the only "interested person," could not (there being no creditors of the deceased heir's estate), prosecute the appeal, either on behalf of the estate or of the cousins. Darby v. Arrington, 194 Miss. 123, 11 So. 2d 220, 1942 Miss. LEXIS 170 (Miss. 1942).

2. Interested parties.

An administrator is not such an "interested party" within statutes providing that a proponent may make all interested persons parties to application for probate of will and that any interested person may at any time within two years contest validity of will probated without notice, as is authorized to contest will subsequently presented for probate. Austin v. Patrick, 179 Miss. 718, 176 So. 714, 1937 Miss. LEXIS 74 (Miss. 1937).

3. Conclusiveness of decree.

The admission of a will to probate was only prima facie evidence of its validity and would not conclude the heirs at law as interested parties from contesting will within two years in manner prescribed by statute, where the heirs at law had not been made parties to the petition for the probate thereof. Austin v. Patrick, 179 Miss. 718, 176 So. 714, 1937 Miss. LEXIS 74 (Miss. 1937).

In proceeding to probate will and to remove administratrix theretofore appointed, chancery court was without jurisdiction to hear contest as to validity of will where none of the interested parties as such were before the court, and hence such parties would not be concluded by decree adjudicating validity of will. Austin v. Patrick, 179 Miss. 718, 176 So. 714, 1937 Miss. LEXIS 74 (Miss. 1937).

RESEARCH REFERENCES

ALR.

Judgment denying validity of will because of undue influence, lack of mental capacity, or the like, as res judicata as to validity of another will, deed, or other instrument. 25 A.L.R.2d 657.

Necessity that executor or administrator be represented by counsel in presenting matters in probate court. 19 A.L.R.3d 1104.

Am. Jur.

79 Am. Jur. 2d, Wills § 760 et seq.

25 Am. Jur. Pl & Pr Forms (Rev), Wills, Forms 72, 72.1, 72.2 (notice).

§ 91-7-21. Caveat against probate may be filed.

Any one desiring to contest a will presented for probate may do so before probate by entering in the clerk's office in which it shall be presented his objection to the probate thereof, and causing all parties interested and who do not join him in such objection to be made parties defendant. Thereupon the issue devisavit vel non shall be made up and tried, and proceedings had as in other like cases. When an objection to the probate of a will has been made in writing, filed with the clerk, probate shall not be had of such will without notice to the objector.

HISTORY: Codes, 1880, § 1970; 1892, § 1815; 1906, § 1990; Hemingway's 1917, § 1655; 1930, § 1608; 1942, § 504.

Cross References — Right to renounce will, see § 91-5-25 et seq.

Rights of interested parties to contest will devising real property which is admitted to probate as muniment of title only, see § 91-5-35.

JUDICIAL DECISIONS

1. In general.

A chancery court did not have jurisdiction to hear a will contest where the executor failed to properly designate the beneficiaries as necessary parties, since the "interested and necessary parties" were not timely noticed and properly joined in the lawsuit; the chancellor should have joined all necessary and proper parties before exercising jurisdiction. Padron v. Martell (In re Estate of McClerkin), 651 So. 2d 1052, 1995 Miss. LEXIS 135 (Miss. 1995).

In an action to probate a will, the chancellor erred in sustaining the executor's and beneficiaries' motions to dismiss a caveat against probate filed by will contestants on the ground that the will was not contested within 2 years as required by § 91-7-23 where the beneficiaries were not listed as interested parties on the petition to probate the will, since the beneficiaries were necessary parties entitled to notice of the action. Padron v. Martell (In re Estate of McClerkin), 651 So. 2d 1052, 1995 Miss. LEXIS 135 (Miss. 1995).

Pleadings filed by the executor and sole beneficiary of 1980 will constituted a caveat against or contest of 1982 will sought to be substituted for earlier will for probate. Trotter v. Trotter, 490 So. 2d 827, 1986 Miss. LEXIS 2485 (Miss. 1986).

Where a will has been admitted to probate in common form as the last will of a testator, it will remain the last will of the testator unless (within the time allowed by law) it is set aside by an order of the chancery court upon a contest and issue devisavit vel non. Perry v. Aldrich, 251 Miss. 429, 169 So. 2d 786, 1964 Miss. LEXIS 361 (Miss. 1964).

Where contest of a will was filed after admission of the will to probate by the clerk in vacation without notice to the objectors but before such admission was approved and confirmed by the court, such contest was not filed "before probate" within the meaning of this section [Code 1942, § 504], so as to preclude introduction in evidence of the probate of the will as prima facie evidence of its validity, in the trial of the will contest. Bigleben v. Henry, 196 Miss. 586, 17 So. 2d 602, 1944 Miss. LEXIS 238 (Miss. 1944).

Entry by the clerk of his order in vacation admitting a will to probate is an adjudication by him that the instrument has been duly proven by the presentation thereof with the affidavits of the subscribing witnesses thereto attached. Bigleben v. Henry, 196 Miss. 586, 17 So. 2d 602, 1944 Miss. LEXIS 238 (Miss. 1944).

Probate of a will in common form before the clerk in vacation should be deemed prima facie evidence of the validity of the will unless and until its invalidity shall have been determined by the court. Bigleben v. Henry, 196 Miss. 586, 17 So. 2d 602, 1944 Miss. LEXIS 238 (Miss. 1944).

Where instrument purporting to be a will was admitted to probate by the clerk in vacation, without notice to the objectors, and will contest was filed thereafter but before approval and confirmation of clerk's acts in question, and admission to probate was thereafter approved and confirmed over objection of contestants, and on subsequent trial of will contest probate of the instrument was offered in evidence but contestant offered no evidence, peremptory instruction in favor of proponent was correct. Bigleben v. Henry, 196 Miss. 586, 17 So. 2d 602, 1944 Miss. LEXIS 238 (Miss. 1944).

Surviving wife, only heir at law, may contest husband's will. Woodville v. Pizzati, 119 Miss. 442, 81 So. 127, 1919 Miss. LEXIS 22 (Miss. 1919).

Acquiescence in probate of will in Louisiana, by surviving wife, held not to estop her from contesting will in Mississippi. Woodville v. Pizzati, 119 Miss. 442, 81 So. 127, 1919 Miss. LEXIS 22 (Miss. 1919).

RESEARCH REFERENCES

ALR.

Right of executor or administrator to contest will codicil of his decedent. 31 A.L.R.2d 756.

Validity and enforceability of agreement to drop or compromise will contest or withdraw objections to probate, or of agreement to induce others to do so. 42 A.L.R.2d 1319.

Decedent's spouse as a proper party to contest will. 78 A.L.R.2d 1060.

Right of trustee named in earlier will to contest, or seek to revoke probate of, later will. 94 A.L.R.2d 1409.

Estoppel to contest will or attack its validity by acceptance of benefits thereunder. 78 A.L.R.4th 90.

Am. Jur.

79 Am. Jur. 2d, Wills §§ 726 et seq., 780.

25 Am. Jur. Pl & Pr Forms (Rev), Wills, Forms 241 et seq. (opposition and contest).

9 Am. Jur. Trials, Will Contests, § 1 et seq.

CJS.

95 C.J.S., Wills §§ 498, 499, 501-510, 537 et seq.

§ 91-7-23. Validity contested within two years.

Any person interested may, at any time within two years, by petition or bill, contest the validity of the will probated without notice; and an issue shall be made up and tried as other issues to determine whether the writing produced be the will of the testator or not. If some person does not appear within two years to contest the will, the probate shall be final and forever binding, saving to infants and persons of unsound mind the period of two years to contest the will after the removal of their respective disabilities. In case of concealed fraud, the limitation shall commence to run at, and not before, the time when such fraud shall be, or with reasonable diligence might have been, first known or discovered.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (29); 1857, ch. 60, art. 43; 1871, § 1099; 1880, § 1961; 1892, § 1822; 1906, § 1997; Hemingway's 1917, § 1662; 1930, § 1609; 1942, § 505.

Cross References — Rights of interested parties to contest will devising real property which is admitted to probate as muniment of title only, see § 91-5-35.

Criminal offense of alteration, destruction, or secretion of wills, see § 97-9-77.

Criminal offense of forgery of will, see § 97-21-63.

JUDICIAL DECISIONS

ANALYSIS

1. Construction and application in general.
2. Who may contest, or procure construction of, will.
3. Issues which may be submitted or considered at same time.
4. Concealed fraud.

1. Construction and application in general.

Trial court did not err in dismissing the will contest as the two-year statute of limitations had run and the will contest was procedurally barred because the two-year limitations period began running in the current case on April 30, 2015, when the chancellor ordered that the decedent's 2013 will be admitted to probate; and there was nothing in the record to suggest that the 2013 will admitted to probate, whether the chancellor saw a copy or not, was anything other than the decedent's 2013 will, the original of which was later filed. Boyd v. Smith (In re Will of Ratcliff), 315 So. 3d 1025, 2021 Miss. LEXIS 112 (Miss. 2021).

Trial court did not err in dismissing the will contest as the two-year statute of limitations had run and the will contest was procedurally barred because the two-year limitations period began running in the current case on April 30, 2015, when the chancellor ordered that the decedent's 2013 will be admitted to probate; and there was nothing in the record to suggest that the 2013 will admitted to probate, whether the chancellor saw a copy or not, was anything other than the decedent's 2013 will, the original of which was later filed. Boyd v. Smith (In re Will of Ratcliff), 315 So. 3d 1025, 2021 Miss. LEXIS 112 (Miss. 2021).

Daughter of testator was not entitled to go forward on the daughter's will contest filed in the forum county more than two years after the testator's will was admitted to probate there. Pursuant to Miss. Code Ann. § 91-7-23, the daughter had to file the daughter's will contest within two years from the date the will was admitted to probate, and the daughter did not do so. Ellzey v. McCormick, 17 So. 3d 583, 2009 Miss. App. LEXIS 118 (Miss. Ct. App. 2009).

As decedent's brother did not contest the decedent's will within the two-year limitations period for contesting a will admitted to probate in common form, the probate in common form was binding and final. In re Estate of Kelly v. Cuevas, 951 So. 2d 564, 2005 Miss. App. LEXIS 995 (Miss. Ct. App. 2005).

In an action to probate a will, the chancellor erred in sustaining the executor's and beneficiaries' motions to dismiss a caveat against probate filed by will contestants on the ground that the will was not contested within 2 years as required by § 91-7-23 where the beneficiaries were not listed as interested parties on the petition to probate the will, since the beneficiaries were necessary parties entitled to notice of the action. Padron v. Martell (In re Estate of McClerkin), 651 So. 2d 1052, 1995 Miss. LEXIS 135 (Miss. 1995).

The failure to join known interested parties within 2 years from the date of probate of a will did not require dismissal of a petition to contest the will; treatment of the "persons interested" as necessary parties would be governed by Rules 19 and 21, Miss. R. Civ. P., and therefore the chancery court was required to make the interested persons parties and process issue accordingly. Estate of Schneider, 585 So. 2d 1275, 1991 Miss. LEXIS 643 (Miss. 1991).

The word "probate" within the meaning of § 91-7-23 refers to the act of the clerk accepting the will for probate, rather than the date upon which the estate closed and, therefore, the 2-year limitations period runs from the date the clerk admits the will to probate. In re Will of Fields, 570 So. 2d 1202, 1990 Miss. LEXIS 708 (Miss. 1990).

Attempt to contest will was unseasonable where, while chancery court was in vacation, chancery clerk on January 24, 1983, admitted will and codicils to probate, thereafter issuing Letters Testamentary; on June 13, 1983, chancellor entered order ratifying actions by chancery clerk conducted while court was in vacation; and, action to set aside will alleging mental incompetency when making will was commenced on May 6, 1985. Sims v. Stennis, 510 So. 2d 798 (Miss. 1987).

The sole issue in a will contest is devisavit vel non, or will or no will. Trotter v. Trotter, 490 So. 2d 827, 1986 Miss. LEXIS 2485 (Miss. 1986).

In an action by a devisee under a 1935 will to perfect his title in certain realty, the trial court correctly dismissed the pending proceedings upon the motion of such devisee, even though a contest of the will had been filed, where it was discovered that the original will had been admitted to probate in 1937 and where the contestants made no attempt to come within the exceptions to the two-year statute of limitations for will contests. In re Last Will & Testament of Hickman, 374 So. 2d 239, 1979 Miss. LEXIS 2339 (Miss. 1979).

Under Code 1972 § 11-5-3, § 91-7-23, and § 91-7-29, prescribing will contest procedures, trial judge erred in directing verdict in favor of proponents of will on issue of testamentary capacity and undue influence, since roll of jury in will contest is same as that of jury in civil trial in court of law and is not "merely advisory." Fowler v. Fisher, 353 So. 2d 497, 1977 Miss. LEXIS 2002 (Miss. 1977).

Under former provisions, it was held that in a proceeding on a petition for probate of a will and revocation of a will previously probated by the defendants, where the plaintiff had filed a petition within the two-year statute of limitations but did not request service of process to issue until after the limitation period, the suit was barred by limitations, since to constitute "legal filing" of the suit, so as to toll the statute of limitations, the presentation of the bill or petition to the clerk must be followed by the issuance of process in the normal and usual manner without undue delay. Knuckles v. Wells, 222 So. 2d 660 (Miss. 1969).

Where a will has been admitted to probate in common form as the last will of a testator, it will remain the last will of the testator unless within the time allowed by law it is set aside by an order of the chancery court upon a contest and issue devisavit vel non. Perry v. Aldrich, 251 Miss. 429, 169 So. 2d 786, 1964 Miss. LEXIS 361 (Miss. 1964).

In the contest of a will, the burden was on the proponent to prove the validity of the will, i.e., that the testator had mental capacity to make it, and that he was not procured to make it by the pressure of undue influence upon him, and this burden was met by the introduction of evidence that the will had been duly admitted to probate. O'Bannon v. Henrich, 191 Miss. 815, 4 So. 2d 208, 1941 Miss. LEXIS 176 (Miss. 1941).

The admission of a will to probate was only prima facie evidence of its validity and would not conclude the heirs at law as interested parties from contesting will within two years in manner prescribed by statute, where the heirs at law had not been made parties to the petition for the probate thereof. Austin v. Patrick, 179 Miss. 718, 176 So. 714, 1937 Miss. LEXIS 74 (Miss. 1937).

Contest as to the validity of a will probated without notice must be brought in the court in which the will was probated, the contest being merely supplementary to and a continuation of, the probate proceedings, and, accordingly, the contest is not maintainable in federal courts. In re Armistead's Estate, 4 F. Supp. 606, 1933 U.S. Dist. LEXIS 1282 (D. Miss. 1933).

Parties seeking to set aside will as forgery have burden of showing forgery by clear and convincing pleading, and evidence. Didlake v. Ellis, 158 Miss. 816, 131 So. 267, 1930 Miss. LEXIS 112 (Miss. 1930).

2. Who may contest, or procure construction of, will.

Grandchildren of decedent had no standing to maintain an action challenging the validity of the decedent's will because they were not interest parties at the time of the will's entry into probate as required by Miss. Code Ann. § 91-7-23. They had no direct, pecuniary interest in the estate at the time it was entered into probate or within the two-year statute of limitations. Tatum v. Wells, 2 So. 3d 739, 2009 Miss. App. LEXIS 49 (Miss. Ct. App. 2009).

Putative illegitimate children were not interested persons because they failed to establish any right to inherit as illegitimates, therefore, they lacked standing to contest the last will and testament of the decedent. Parks v. Mathis (In re Estate of Mathis), 800 So. 2d 119, 2001 Miss. App. LEXIS 455 (Miss. Ct. App. 2001).

A will contestant who alleged that she was the only natural child and heir at law of the decedent had standing to contest the will, even though she would take more under the will than she would without it under her existing status, since her status could change pending the hearing on heirship, and she would take more without the will than under the will if she was found to be the sole heir at law. Dees v. Estate of Moore, 562 So. 2d 109, 1990 Miss. LEXIS 257 (Miss. 1990).

A widow could not contest her husband's will more than two years after it was probated, notwithstanding her contention that she was lulled into refraining from contesting it by promises of the testator's children to take care of her and to let her share in the estate. Rush v. Rush, 360 So. 2d 1240, 1978 Miss. LEXIS 2341 (Miss. 1978).

Children of deceased, who entered into agreement with their father not to interfere with his plans as to the future or to make any claim on other property of decedent, in return for gift of property, were not barred from subsequently contesting will where the chancellor found that the agreement was lacking in certainty as to the purpose and extent of the waiver. Ward v. Ward, 203 Miss. 32, 33 So. 2d 294, 1948 Miss. LEXIS 227 (Miss. 1948).

An administrator is not such an "interested party" within statutes providing that a proponent may make all interested persons parties to application for probate of will and that any interested person may at any time within two years contest validity of will probated without notice, as is authorized to contest will subsequently presented for probate. Austin v. Patrick, 179 Miss. 718, 176 So. 714, 1937 Miss. LEXIS 74 (Miss. 1937).

Parties having no interest in property devised under will admitted to probate cannot complain of forgery or fraud of person beneficially interested. Didlake v. Ellis, 158 Miss. 816, 131 So. 267, 1930 Miss. LEXIS 112 (Miss. 1930).

Bill seeking to revoke probate of will for forgery and fraud, not showing complainants were interested parties nor essential requisites to probate of destroyed will, held insufficient. Didlake v. Ellis, 158 Miss. 816, 131 So. 267, 1930 Miss. LEXIS 112 (Miss. 1930).

Administrator may not contest will subsequently presented for probate. Cajoleas v. Attaya, 145 Miss. 436, 111 So. 359, 1927 Miss. LEXIS 158 (Miss. 1927).

Complainant having no interest subject to enforcement in equity cannot secure construction of will. Orman v. Hall, 91 So. 273 (Miss. 1922).

A person who takes more under a will than he would as heir cannot contest the validity of the will. Biles v. Dean, 14 So. 536 (Miss. 1893).

3. Issues which may be submitted or considered at same time.

A party may combine a suit to determine heirship with a suit to contest a will. Dees v. Estate of Moore, 562 So. 2d 109, 1990 Miss. LEXIS 257 (Miss. 1990).

Whether writing produced is testator's will is sole question to be determined on issue of devisavit vel non, and questions as to construction, sufficiency of identification of beneficiaries, and description of property devised cannot be considered. Kinard v. Whites, 175 Miss. 480, 167 So. 636, 1936 Miss. LEXIS 66 (Miss. 1936).

If the interest or heirship of the contestants be denied, that issue should be determined before the issue as to the validity of the will; and a submission of both issues to the same jury is erroneous. Edwards v. Gaulding, 38 Miss. 118, 1859 Miss. LEXIS 101 (Miss. 1859).

4. Concealed fraud.

Although appellant claimed that the executor's actions constituted concealed fraud, because the will was admitted to probate in common form, and appellant was not a party, the only duties of the executor were to notify the parties named in the will and give 90 day notice to creditors, both of which were done; thus, the rule of concealed fraud did not apply. Peyton v. Longo (In re Estate of Davis), 315 So. 3d 1080, 2021 Miss. App. LEXIS 157 (Miss. Ct. App. 2021).

Appellants' claim that the chancellor erred in finding that a property interest had passed through inheritance was not considered on appeal where the argument was not raised before the chancellor, the will at issue was probated in 1986, no issue of concealed fraud had been raised, and thus, consistent with Miss. Code Ann. § 91-7-23 (Rev. 2013), the inheritance issue was procedurally barred. Wood v. Miller, 179 So. 3d 48, 2015 Miss. App. LEXIS 300 (Miss. Ct. App. 2015).

A will contest initiated by the daughter of a predeceased son of the decedent, in which she alleged that she was inadvertently omitted from the will, was time-barred where it was not commenced within two years, notwithstanding her contention that the executrix and the attorney for the estate intentionally misled her by stating that she did not need to worry because there was no objection to her and her siblings receiving a share of the estate since she knew from almost the moment the will was offered for probate that she was not included in the estate and the probate of the estate was not hidden from her. Williams v. Estate of Winding (In re Last Will & Testament of Winding), 783 So. 2d 707, 2001 Miss. LEXIS 102 (Miss. 2001).

"Concealed fraud," within statute extending time for contesting validity of will probated without notice, is designed fraud by which party knowing to whom right belongs conceals circumstances giving that right, thereby enabling himself to enter and hold. Wilson v. Wilson, 166 Miss. 369, 146 So. 855, 1933 Miss. LEXIS 358 (Miss. 1933).

Where plaintiffs knew from beginning facts which would have avoided will, but testator's widow promised them she would make division of property and after two years expired repudiated promise, there was no "concealed fraud" extending time for contesting validity of will. Wilson v. Wilson, 166 Miss. 369, 146 So. 855, 1933 Miss. LEXIS 358 (Miss. 1933).

Estoppel could not operate to prevent defendant from pleading statute of limitations applying to will contest, which set up its own exceptions. Wilson v. Wilson, 166 Miss. 369, 146 So. 855, 1933 Miss. LEXIS 358 (Miss. 1933).

RESEARCH REFERENCES

ALR.

Provision of will for forfeiture in case of contest, as applied to contest by one not a beneficiary. 7 A.L.R.2d 1357.

Instructions, in will contest, defining natural objects of testator's bounty. 11 A.L.R.2d 731.

Validity and enforceability of agreement to drop or compromise will contest or withdraw objections to probate, or of agreement to induce others to do so. 42 A.L.R.2d 1319.

Decedent's spouse as a proper party to contest will. 78 A.L.R.2d 1060.

Wills: challenge in collateral proceeding to decree admitting will to probate, on ground of fraud inducing complainant not to resist probate. 84 A.L.R.3d 1119.

Modern status: inheritability or descendability of right to contest will. 11 A.L.R.4th 907.

Word "child" or "children" in will as including grandchild or grandchildren. 30 A.L.R.4th 319.

Fraud as extending statutory limitations period for contesting will or its probate. 48 A.L.R.4th 1094.

Sufficiency of evidence to support grant of summary judgment in will probate or contest proceedings. 53 A.L.R.4th 561.

§ 91-7-25. Necessary parties to contest.

In any proceeding to contest the validity of a will, all persons interested in such contest shall be made parties.

HISTORY: Codes, 1880, § 1968; 1892, § 1823; 1906, § 1998; Hemingway's 1917, § 1663; 1930, § 1610; 1942, § 506.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Standing.

1. In general.

Chancery court's judgment denying daughters' petition to contest the will of their mother had to be reversed and set aside because all necessary parties were not joined. Schmidt v. True (In re Will of True), 220 So. 3d 276, 2017 Miss. App. LEXIS 288 (Miss. Ct. App. 2017).

A chancery court did not have jurisdiction to hear a will contest where the executor failed to properly designate the beneficiaries as necessary parties, since the "interested and necessary parties" were not timely noticed and properly joined in the lawsuit; the chancellor should have joined all necessary and proper parties before exercising jurisdiction. Padron v. Martell (In re Estate of McClerkin), 651 So. 2d 1052, 1995 Miss. LEXIS 135 (Miss. 1995).

In an action to probate a will, the chancellor erred in sustaining the executor's and beneficiaries' motions to dismiss a caveat against probate filed by will contestants on the ground that the will was not contested within 2 years as required by § 91-7-23 where the beneficiaries were not listed as interested parties on the petition to probate the will, since the beneficiaries were necessary parties entitled to notice of the action. Padron v. Martell (In re Estate of McClerkin), 651 So. 2d 1052, 1995 Miss. LEXIS 135 (Miss. 1995).

The failure to join known interested parties within 2 years from the date of probate of a will did not require dismissal of a petition to contest the will; treatment of the "persons interested" as necessary parties would be governed by Rules 19 and 21, Miss. R. Civ. P., and therefore the chancery court was required to make the interested persons parties and process issue accordingly. Estate of Schneider, 585 So. 2d 1275, 1991 Miss. LEXIS 643 (Miss. 1991).

All legatees are indispensable parties to a will contest. Moore v. Jackson, 247 Miss. 854, 157 So. 2d 785, 1963 Miss. LEXIS 364 (Miss. 1963).

Proponent's failure to plead nonjoinder of necessary parties to will contest does not waive the objection. Moore v. Jackson, 247 Miss. 854, 157 So. 2d 785, 1963 Miss. LEXIS 364 (Miss. 1963).

Heirs at law who would take property of the deceased in the absence of a valid will are necessary parties. Provenza v. Provenza, 201 Miss. 836, 29 So. 2d 669, 1947 Miss. LEXIS 453 (Miss. 1947).

Once the court has acquired jurisdiction of all interested parties, jurisdiction is not lost by the withdrawal of an answer filed on behalf of one of the defendants by one duly authorized to make such filing. Provenza v. Provenza, 201 Miss. 836, 29 So. 2d 669, 1947 Miss. LEXIS 453 (Miss. 1947).

In suit to confirm title to land, seeking construction of will to effect that it did not convey title to the land because it was devised to no named legatees, all the beneficiaries should have been under valid process. Dorsey v. Sullivan, 199 Miss. 602, 24 So. 2d 852, 1946 Miss. LEXIS 231 (Miss. 1946).

All "interested parties," or those whose interest detrimentally affected by will, are necessary parties to will contest; heirs at law who would take property but for will, are interested parties; where contestants rely on prior will, all beneficiaries therein are interested parties; all beneficiaries in intermediate will are necessary parties in will contest. Hoskins v. Holmes County Community Hospital, 135 Miss. 89, 99 So. 570, 1924 Miss. LEXIS 19 (Miss. 1924).

2. Standing.

Appellant was properly ordered to pay an estate's attorneys' fees under Miss. R. Civ. P. 11, as appellant's arguments on the issue of his standing to contest the will were frivolous, his filings contained misrepresented facts, and the estate was forced to incur unnecessary attorney's fees in responding to those filings. Covington v. McDaniel (In re Estate of Necaise), 126 So. 3d 49, 2013 Miss. App. LEXIS 108 (Miss. Ct. App.), cert. denied, 125 So. 3d 658, 2013 Miss. LEXIS 610 (Miss. 2013).

As appellant failed to obtain a judgment, or status as a creditor of the estate, because the statute of limitations had expired and the action was not properly served upon the estate or the decedent during his lifetime, appellant did not have a direct pecuniary interest against the estate and thus was not an interested party under Miss. Code Ann. § 91-7-25; therefore, he was not a proper party to the will contest. Covington v. McDaniel (In re Estate of Necaise), 126 So. 3d 49, 2013 Miss. App. LEXIS 108 (Miss. Ct. App.), cert. denied, 125 So. 3d 658, 2013 Miss. LEXIS 610 (Miss. 2013).

RESEARCH REFERENCES

ALR.

Standing of legatee or devisee under alleged prior or subsequent will to oppose probate or contest will. 39 A.L.R.3d 321.

Right of heir's assignee to contest will. 39 A.L.R.3d 696.

Estoppel to contest will or attack its validity by acceptance of benefits thereunder. 78 A.L.R.4th 90.

What constitutes contest or attempt to defeat will within provision thereof forfeiting share of contesting beneficiary. 3 A.L.R.5th 590.

Am. Jur.

79 Am. Jur. 2d, Wills § 760 et seq.

§ 91-7-27. Probate of will prima facie evidence.

On the trial of an issue made up to determine the validity of a will which has been duly admitted to probate, such probate shall be prima facie evidence of the validity of the will.

HISTORY: Codes, 1880, § 1969; 1892, § 1824; 1906, § 1999; Hemingway's 1917, § 1664; 1930, § 1611; 1942, § 507.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Construction.
3. Particular applications.

1. In general.

The probation of 1980 will in common form and its admission to probate created prima facie evidence that the will was valid. Trotter v. Trotter, 490 So. 2d 827, 1986 Miss. LEXIS 2485 (Miss. 1986).

The probate of a will in common form is not a final adjudication of its validity but is an "incipient step" necessary to enable the court to proceed to carry the will into execution, and it is not conclusive against heirs and distributees, and if they desire to contest the validity of the will this shall be done by an issue devisavit vel non. Perry v. Aldrich, 251 Miss. 429, 169 So. 2d 786, 1964 Miss. LEXIS 361 (Miss. 1964).

2. Construction.

This section [Code 1942, § 507] must be read together with Code 1942, § 501. Gibson v. Jones, 238 Miss. 186, 117 So. 2d 879, 1960 Miss. LEXIS 394 (Miss. 1960).

3. Particular applications.

Will was properly upheld because the wife made a prima facie case for the will's validity when she probated it in common form, and evidence indicated that although she and the testator had a close relationship, she had not overcome the testator's will so as to exert undue influence on him. Estate of Chapman v. Chapman, 966 So. 2d 1262, 2007 Miss. App. LEXIS 722 (Miss. Ct. App. 2007).

A will is not shown to have been duly admitted to probate in common form, by a record which fails to show compliance with Code 1942, § 501 and makes no attempt to excuse such noncompliance. Gibson v. Jones, 238 Miss. 186, 117 So. 2d 879, 1960 Miss. LEXIS 394 (Miss. 1960).

In a will contest, proof of the probate is all that is required of proponents initially in meeting the burden of proof resting upon them. Wallace v. Harrison, 218 Miss. 153, 65 So. 2d 456, 1953 Miss. LEXIS 525 (Miss. 1953).

In a will contest, a prima facie case was made by proponents by introduction of the proof of probate in common form and this extends to every aspect of the will touching upon its validity and without more, the proponents have introduced sufficient evidence to sustain their burden. Bearden v. Gibson, 215 Miss. 218, 60 So. 2d 655, 1952 Miss. LEXIS 555 (Miss. 1952).

In a will contest where proponents introduced a record of probate of will in common form, it was not necessary that they go further and make proof of will by having one of subscribing witnesses present to testify. Bearden v. Gibson, 215 Miss. 218, 60 So. 2d 655, 1952 Miss. LEXIS 555 (Miss. 1952).

Probate of will in common form before chancery clerk in vacation is prima facie evidence of validity of will until will is declared invalid and set aside by proper and lawful proceeding in proper court, having jurisdiction of subject matter and of parties in interest. Rice v. McMullen, 207 Miss. 706, 43 So. 2d 195, 1949 Miss. LEXIS 382 (Miss. 1949).

Probate of a will in common form before the clerk in vacation should be deemed prima facie evidence of the validity of the will unless and until its invalidity shall have been determined by the court. Bigleben v. Henry, 196 Miss. 586, 17 So. 2d 602, 1944 Miss. LEXIS 238 (Miss. 1944).

Entry by the clerk of his order in vacation admitting a will to probate is an adjudication by him that the instrument has been duly proven by the presentation thereof with the affidavits of the subscribing witnesses thereto attached. Bigleben v. Henry, 196 Miss. 586, 17 So. 2d 602, 1944 Miss. LEXIS 238 (Miss. 1944).

In a will contest after probate, proponents of a will, executed in Texas, were not required to make proof of the validity of the will by having the subscribing witnesses present to testify, or their testimony in the form of depositions, and a prima facie case of the validity of the will was properly made out by introducing the probate of the will in common form by the affidavits of the subscribing witnesses who resided in Texas. Hilton v. Johnson, 194 Miss. 671, 12 So. 2d 524, 1943 Miss. LEXIS 77 (Miss. 1943).

In the contest of a will, the burden was on the proponent to prove the validity of the will, i.e., that the testator had mental capacity to make it, and that he was not procured to make it by the pressure of undue influence upon him, and this burden was met by the introduction of evidence that the will had been duly admitted to probate. O'Bannon v. Henrich, 191 Miss. 815, 4 So. 2d 208, 1941 Miss. LEXIS 176 (Miss. 1941).

RESEARCH REFERENCES

ALR.
Probate of copy of last will as precluding later contest of will under doctrine of res judicata. 55 A.L.R.3d 755.

Am. Jur.
80 Am. Jur. 2d, Wills § 809 et seq.

CJS.
95 C.J.S., Wills §§ 616, 617 et seq.

§ 91-7-29. Trial of issue devisavit vel non.

On the trial of such issue, the proponent of the will shall have the affirmative of the issue and be entitled to all the rights of one occupying such position. The witnesses shall be examined orally before the jury, except where in the circuit court depositions would be admissible; and the testimony taken on the probate of the will shall be admissible if the witnesses who delivered it be dead, out of the state, or have since become incompetent.

HISTORY: Codes, 1880, § 1971; 1892, § 1825; 1906, § 2000; Hemingway's 1917, § 1665; 1930, § 1612; 1942, § 508.

Cross References — Appeals in matters testamentary, see §§ 11-51-3, 11-51-9.

JUDICIAL DECISIONS

ANALYSIS

1. Burden of proof.
2. Admissibility and sufficiency of evidence.
3. —Proof of incapacity or undue influence.
4. Competency of witnesses.
5. Miscellaneous.

1. Burden of proof.
The proponent of a will at all times bears the burden of persuading the trier of fact on all issues requisite to the validity of the will, e.g., due execution and testamentary capacity. At the outset, the proponent bears the burden of producing evidence of due execution and testamentary capacity. This burden is conventionally met by offering the will itself, the affidavits of subscribing witnesses and the judgment admitting the will to probate; these offerings make out the proponent's prima facie case. Once the proponent has shouldered his or her burden of production such that he or she has made out a prima facie

case, the burden of production shifts to the contestants. The burden of persuading the trier of fact on the issues of due execution and testamentary capacity rests on the proponent throughout and never shifts to the contestants; that burden of persuasion is subject to the preponderance of the evidence standard. Clardy v. National Bank of Commerce, 555 So. 2d 64, 1989 Miss. LEXIS 507 (Miss. 1989).

The burden of proof of a proponent of a will is met by the offering and receipt into evidence of the will and the record of its probate and a prima facie case is made by the proponent solely by this proof; the contestants then must offer proof to overcome such prima facie case and although the burden of proof is still with the proponent, the burden of going forward with proof of undue influence or lack of testamentary capacity, or other defenses, shifts to the contestants. Harris v. Sellers, 446 So. 2d 1012, 1984 Miss. LEXIS 1649 (Miss. 1984), overruled in part, Mullins v. Ratcliff, 515 So. 2d 1183, 1987 Miss. LEXIS 2933 (Miss. 1987).

In a will contest an instruction for the proponents that the material inquiry was the capacity of a testator on the very day and at the very time of the execution of the instrument, properly informed the jury of the issue, and was not invalidated by additional language to the effect that such was true regardless of what the jury might think or believe as to the mental capacity of the testator at any other time. Sides v. Adams, 243 So. 2d 59, 1971 Miss. LEXIS 1502 (Miss. 1971).

In will contest on ground of lack of testamentary capacity and existence of undue influence, there is but a single issue-will or no will, and burden is no proponent throughout. Blalock v. Magee, 205 Miss. 209, 38 So. 2d 708, 1949 Miss. LEXIS 426 (Miss. 1949).

In cases where a too close issue of fact is involved, instructions on burden of proof should go no further than to advise jury that proponent of will or plaintiff in other civil cases is required to establish issue by preponderance of evidence. Blalock v. Magee, 205 Miss. 209, 38 So. 2d 708, 1949 Miss. LEXIS 426 (Miss. 1949).

In will contest on ground of mental incapacity and undue influence, instructions are not prejudicially erroneous if, when all of instructions are considered as whole, jury is correctly informed that burden resting upon proponents is to show testamentary capacity and lack of undue influence by preponderance of evidence, although two of instructions given were to effect that burden of proof is upon proponents of will to show by preponderance of evidence that alleged testatrix was at time of execution of alleged will of sound and disposing mind and that if jury finds burden has not been met and that it is left uncertain and doubtful whether testatrix was of sound mind then jury should find for contestants. Blalock v. Magee, 205 Miss. 209, 38 So. 2d 708, 1949 Miss. LEXIS 426 (Miss. 1949).

Instruction that probating of will was prima facie evidence of its validity, and that burden of proving forgery thereof was on contestant, held erroneous. Ellis v. Ellis, 160 Miss. 345, 134 So. 150, 1931 Miss. LEXIS 187 (Miss. 1931).

Error in placing on contestant burden of proving will was forgery held not cured by instruction that burden was on proponent to prove signature was genuine. Ellis v. Ellis, 160 Miss. 345, 134 So. 150, 1931 Miss. LEXIS 187 (Miss. 1931).

In suit to probate a will, and to cancel the probate of prior wills, the burden of proof was on complainant. Mims v. Johnson, 129 Miss. 403, 92 So. 577, 1922 Miss. LEXIS 58 (Miss. 1922).

2. Admissibility and sufficiency of evidence.

When attesting witnesses deny execution or fail to testify, secondary evidence may be introduced by proponents of the will. Ward v. Ward, 124 Miss. 697, 87 So. 153, 1920 Miss. LEXIS 559 (Miss. 1920).

The proponents on an issue devisavit vel non may introduce evidence in rebuttal of that offered by contestants. Sheehan v. Kearney, 82 Miss. 688, 21 So. 41, 1903 Miss. LEXIS 99 (Miss. 1903).

3. —Proof of incapacity or undue influence.

A daughter overcame the presumption of undue influence arising from her father's execution of a will leaving her ½ of his estate to the exclusion of a friend and charitable organizations where the father had told 2 totally disinterested witnesses that he wanted to change his will, the will was executed openly at a medical center in the presence of the 2 subscribing witnesses and medical personnel, and there was evidence that the father understood the extent and value of his assets and was rational, strong-willed, and independent up until the time of his death. Pallatin v. Jones (In re Will of Fankboner), 638 So. 2d 493, 1994 Miss. LEXIS 314 (Miss. 1994).

The test for rebutting a presumption of undue influence has been modified and no longer requires the independent advice of a competent person, but instead requires a showing of the grantor's "independent consent and action." Marsalis v. Lehmann, 566 So. 2d 217, 1990 Miss. LEXIS 532 (Miss. 1990).

Evidence that testator of advanced years living in nursing home was dependent upon beneficiary to some degree is insufficient basis for finding of confidential relationship resulting in will being product of undue influence where there is no proof that testator looked to beneficiary to care for personal needs, to tend to him, or to handle his affairs. In re Will & Estate of Varvaris, 477 So. 2d 273, 1985 Miss. LEXIS 2256 (Miss. 1985).

In an action contesting a will there is a presumption of undue influence that the law imposes where a confidential or fiduciary relationship exists. Harris v. Sellers, 446 So. 2d 1012, 1984 Miss. LEXIS 1649 (Miss. 1984), overruled in part, Mullins v. Ratcliff, 515 So. 2d 1183, 1987 Miss. LEXIS 2933 (Miss. 1987).

In a proceeding devisavit vel non involving a will which was challenged on the ground of lack of testamentary capacity and of undue influence, the submission to jury of both issues was error where the evidence as to undue influence was insufficient. In re Alexander's Will, 221 Miss. 478, 73 So. 2d 172, 1954 Miss. LEXIS 553 (Miss. 1954).

In will contest on ground of lack of testamentary capacity and existence of undue influence, general verdict of jury on issue of whether or not proponents have shown by preponderance of evidence both testamentary capacity and lack of undue influence at time of execution of will should be sustained if proponents fail to prove either or both of these necessary requirements. Blalock v. Magee, 205 Miss. 209, 38 So. 2d 708, 1949 Miss. LEXIS 426 (Miss. 1949).

In will contest on ground of lack of testamentary capacity and existence of undue influence, it should be assumed that general verdict of jury against validity of will was on ground of want of testamentary capacity which was amply supported by evidence, where proof was insufficient to sustain verdict on ground of undue influence. Blalock v. Magee, 205 Miss. 209, 38 So. 2d 708, 1949 Miss. LEXIS 426 (Miss. 1949).

As to undue influence testator's declarations at time of execution of will admissible as res gestae. Sanders v. Sanders, 126 Miss. 610, 89 So. 261, 1921 Miss. LEXIS 70 (Miss. 1921).

Instruction on "undue influence" omitting element of destruction of free agency, is erroneous. Scally v. Wardlaw, 123 Miss. 857, 86 So. 625, 1920 Miss. LEXIS 89 (Miss. 1920).

Where evidence will not support a finding of incapacity, peremptory instruction for proponent proper. Scally v. Wardlaw, 123 Miss. 857, 86 So. 625, 1920 Miss. LEXIS 89 (Miss. 1920).

On an issue devisavit vel non, where the question is as to the sanity of the testator, the contestants are not required to prove his insanity beyond all reasonable doubt. King v. Rowan, 82 Miss. 1, 34 So. 325, 1903 Miss. LEXIS 158 (Miss. 1903).

Upon an issue devisavit vel non, an instruction for contestants is erroneous if it authorizes the jury, without qualification or limitation, to consider the reasonableness or unreasonableness of the will. King v. Rowan, 82 Miss. 1, 34 So. 325, 1903 Miss. LEXIS 158 (Miss. 1903).

4. Competency of witnesses.

Lay witnesses are competent to testify on issue of capacity of testator to make will on date of its alleged execution where they first give facts upon which their opinions are based. Blalock v. Magee, 205 Miss. 209, 38 So. 2d 708, 1949 Miss. LEXIS 426 (Miss. 1949).

At the trial of an issue devisavit vel non, the contestant, or the proponent, although the personal legatee, can testify in support of the will. Tucker v. Whitehead, 59 Miss. 594, 1882 Miss. LEXIS 169 (Miss. 1882).

5. Miscellaneous.

A breach of a contract not to revoke a will is not grounds for contesting the will pertaining to the contract. Trotter v. Trotter, 490 So. 2d 827, 1986 Miss. LEXIS 2485 (Miss. 1986).

Party who desires jury to try issue of devisavit vel non is under duty to specifically request jury before hearing on matter. In re Will & Estate of Varvaris, 477 So. 2d 273, 1985 Miss. LEXIS 2256 (Miss. 1985).

Under Code 1972 § 11-5-3, § 91-7-23, and § 91-7-29, prescribing will contest procedures, trial judge erred in directing verdict in favor of proponents of will on issue of testamentary capacity and undue influence, since roll of jury in will contest is same as that of jury in civil trial in court of law and is not "merely advisory." Fowler v. Fisher, 353 So. 2d 497, 1977 Miss. LEXIS 2002 (Miss. 1977).

The probate of a will in common form is not a final adjudication of its validity but is an "incipient step" necessary to enable the court to proceed to carry the will into execution, and it is not conclusive against heirs and distributees, and if they desire to contest the validity of the will this shall be done by an issue devisavit vel non. Perry v. Aldrich, 251 Miss. 429, 169 So. 2d 786, 1964 Miss. LEXIS 361 (Miss. 1964).

On trial of devisavit vel non after probate of will and record of probate proceedings, failure to submit such record to the jury was reversible error. Edgington v. Mabry, 111 Miss. 492, 71 So. 801, 1916 Miss. LEXIS 325 (Miss. 1916).

RESEARCH REFERENCES

ALR.

Estoppel to contest will or attack its validity by acceptance of benefits thereunder. 28 A.L.R.2d 116.

Alzheimer's disease as affecting testamentary capacity. 47 A.L.R.5th 523.

Am. Jur.

80 Am. Jur. 2d, Wills § 872 et seq.

CJS.

95 C.J.S., Wills § 684 et seq.

§ 91-7-31. Wills recorded.

All original wills, after probate thereof, shall be recorded and remain in the office of the clerk of the court where they were proved, except during the time they may be removed to any other court under proper process, from which they shall be duly returned to the proper office. Authenticated copies of such wills may be recorded in any county in this state.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (23); 1857, ch. 60, art. 48; 1871, § 1004; 1880, § 1975; 1892, § 1828; 1906, § 2003; Hemingway's 1917, § 1668; 1930, § 1613; 1942, § 509.

Cross References — Criminal offense of forgery of record of will, see § 97-21-45.

JUDICIAL DECISIONS

1. In general.

Under the provisions of Code 1972 § 91-7-33, the original will of a non-resident testatrix was properly probated in this state, and this section prohibited withdrawal of the original will for transfer to another state. Crum v. First Nat'l Bank, 321 So. 2d 287 (Miss. 1975).

Court may take notice of fact that it has not been the practice to record domestic wills in counties other than that of original probate. Federal Land Bank v. Newsom, 175 Miss. 114, 161 So. 864, 166 So. 345, 1935 Miss. LEXIS 27 (Miss. 1935).

Statute providing that authenticated copies of wills may be recorded in any county is not mandatory. Federal Land Bank v. Newsom, 175 Miss. 114, 161 So. 864, 166 So. 345, 1935 Miss. LEXIS 27 (Miss. 1935).

Domestic will when probated and recorded in county in which testator resided at time of death constituted notice throughout state to subsequent mortgagee of land in Mississippi devised by will, without necessity of recording will in county wherein land was situated. Federal Land Bank v. Newsom, 175 Miss. 114, 161 So. 864, 166 So. 345, 1935 Miss. LEXIS 27 (Miss. 1935).

§ 91-7-33. Foreign wills recorded.

Authenticated copies of wills proven according to the laws of any of the states of the union, of the territories, of the District of Columbia, or any foreign country, and affecting or disposing of real property within this state, may be admitted to probate in the proper court. Such will may be contested as the original might have been if it had been executed in this state, or the original will may be proven and admitted to record here.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (25); 1857, ch. 60, art. 49; 1871, § 1105; 1880, § 1976; 1892, § 1829; 1906, § 2004; Hemingway's 1917, § 1669; 1930, § 1614; 1942, § 510; Laws, 2020, ch. 343, § 4, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment inserted "real" preceding "property within this state."

Cross References — Revocation of letters testamentary granted to nonresident, see § 91-7-89.

JUDICIAL DECISIONS

1. In general.

Chancellor erred in holding that Miss. Code Ann. § 91-7-33 absolutely barred the sister from initially proving a lost foreign will in Mississippi where the will disposed of property in this state. Given the existence of genuine issues of material fact regarding the validity of the testator's will, the chancellor should have proceeded with the will contest and impaneled a jury to decide the will's validity. Watt v. Cobb (In re Estate of High), 19 So. 3d 1282, 2009 Miss. App. LEXIS 743 (Miss. Ct. App. 2009).

Trial court had jurisdiction to admit to probate in Mississippi the will of nondomiciliary as the decedent had lived in a Mississippi county for more than 30 years, and the chancery court properly determined that at the time of his death decedent would have owned some clothing or other personal property in the county, and Miss. Code Ann. § 91-7-33 does not require that the property be of a certain value or amount. In re Estate of Kelly v. Cuevas, 951 So. 2d 564, 2005 Miss. App. LEXIS 995 (Miss. Ct. App. 2005).

Mississippi courts may intervene when disposition of decedent's interests involve property interests which are subject to its jurisdiction. Davis v. Davis, 507 So. 2d 24 (Miss. 1987).

Under the provisions of this section, the original will of a non-resident testatrix was properly probated in this state, and Code 1972 § 91-7-31 prohibited the withdrawal of the original will for transfer to another state. Crum v. First Nat'l Bank, 321 So. 2d 287 (Miss. 1975).

Having properly assumed jurisdiction of the will of a non-resident testatrix, the Mississippi court was not required by comity to defer to the courts of the domiciliary state on the issue of which of the parties should bear the burden of the estate taxes and other debts of the estate. Crum v. First Nat'l Bank, 321 So. 2d 287 (Miss. 1975).

Beneficiary's acquiescence in probate proceedings in Louisiana held not to estop him from seeking annulment of proceedings in Mississippi under certified copy of Louisiana proceedings. Gilmore v. Gilmore, 144 Miss. 424, 110 So. 111, 1926 Miss. LEXIS 377 (Miss. 1926).

Will of nonresident devising property within state may be probated in first instance in county where situated. Bolton v. Barnett, 131 Miss. 802, 95 So. 721, 1923 Miss. LEXIS 220 (Miss. 1923).

Foreign will ineffective as conveyance until probated, when it relates back; purchaser with notice of will takes subject to probate. Belt v. Adams, 125 Miss. 387, 87 So. 666, 1921 Miss. LEXIS 127 (Miss. 1921).

Judgment of Louisiana court establishing instrument as will, not conclusive on Mississippi court. Woodville v. Pizzati, 119 Miss. 442, 81 So. 127, 1919 Miss. LEXIS 22 (Miss. 1919).

All rights derived through a will insofar as it affects property situated in this state are governed by Mississippi law. Heard v. Drennen, 93 Miss. 236, 46 So. 243, 1908 Miss. LEXIS 67 (Miss. 1908).

The probate of an authenticated copy does not authorize an executor to maintain an ejectment without taking out letters in this state. Sims v. Walden, 65 Miss. 211, 3 So. 457 (Miss. 1887); Pratt v. Hargraves, 77 Miss. 892, 28 So. 722, 1900 Miss. LEXIS 52 (Miss. 1900).

RESEARCH REFERENCES

ALR.

Probate, in state where assets are found, of will of nonresident which has not been admitted to probate in state of domicil. 20 A.L.R.3d 1033.

Law Reviews.

1987 Mississippi Supreme Court Review, Wills and estates. 57 Miss. L. J. 542, August, 1987.

§ 91-7-35. Grant of letters testamentary.

The executor named in any last will and testament, whether made in this state or out of it and admitted to probate here on an authenticated copy or on the original, shall be entitled to letters testamentary thereon if not legally disqualified. A person shall not be capable of being executor who, at the time when letters testamentary ought to be granted, is under the age of eighteen years, of unsound mind, or convicted of a felony.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (25); 1857, ch. 60, art. 50; 1871, § 1106; 1880, § 1978; 1892, § 1831; 1906, § 2006; Hemingway's 1917, § 1671; 1930, § 1615; 1942, § 511.

Cross References — Recording of letters testamentary by chancery clerk, see § 9-5-137.

Grant of letters testamentary by chancery clerk, see § 9-5-141.

Power of bank to act as executor or administrator, see § 81-5-33.

Accounts of fiduciaries in savings associations, see § 81-12-139.

Persons disqualified to administer estate, see § 91-7-65.

Appointment of testamentary guardian, see § 93-13-7.

JUDICIAL DECISIONS

1. In general.

Appellant was never qualified to act as executor of the estate because appellant had been convicted of possesion of a controlled substance (a felony) and sentenced to serve two years in prison. Dodson v.

Dodson (In re Estate of Dodson), 20 So. 3d 73, 2009 Miss. App. LEXIS 716 (Miss. Ct. App. 2009).

Executor or administrator is regarded as officer of court subject to direction, supervision and control of court until estate is closed and he is finally discharged. Bailey v. Sayle, 206 Miss. 757, 40 So. 2d 618, 1949 Miss. LEXIS 298 (Miss. 1949).

Where foreign will is probated on authenticated copy, the court should appoint executors named therein if not disqualified under the laws of Mississippi, whether or not they are disqualified in the state where will is made. Heard v. Drennen, 93 Miss. 236, 46 So. 243, 1908 Miss. LEXIS 67 (Miss. 1908).

RESEARCH REFERENCES

ALR.

Delegation by will of the power to nominate executor. 11 A.L.R.2d 1284.

Construction and effect of statutory provision disqualifying persons wanting integrity. 73 A.L.R.2d 458.

Adverse interest or position as disqualification for appointment of administrator, executor, or other personal representative. 11 A.L.R.4th 638.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators §§ 158, 159, 160, 162.

9A Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 1 et seq. (appointment, qualification, and tenure).

8 Am. Jur. Legal Forms 2d, Executors and Administrators, §§ 104:13 et seq. (appointment, qualification, and tenure).

CJS.

33 C.J.S., Executors and Administrators §§ 21-23 et seq.

Law Reviews.

1978 Mississippi Supreme Court Review: Miscellaneous. 50 Miss. L. J. 165, March, 1979.

§ 91-7-37. Eighteen the age of majority for executors and administrators.

The age of eighteen (18) years shall be the age of majority of an executor, executrix, administrator or administratrix. In case letters testamentary or of administration shall be granted to any one under twenty-one (21) years, the bond executed by such person for the performance of the duties shall be as valid and binding as if such person were of full age.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (36); 1857, ch. 60, art. 51; 1871, § 1107; 1880, § 1979; 1892, § 1832; 1906, § 2007; Hemingway's 1917, § 1672; 1930, § 1616; 1942, § 512; Laws, 1974, ch. 446, eff from and after passage (approved March 26, 1974).

Cross References — Removal of disability of minority generally, see § 93-19-1 et seq.

JUDICIAL DECISIONS

1. In general.

Approved sale or lease by minor administrator is valid. Giglio v. Woollard, 126 Miss. 6, 88 So. 401, 1921 Miss. LEXIS 5 (Miss. 1921).

RESEARCH REFERENCES

ALR.
Capacity of infant to act as executor or administrator, and effect of improper appointment. 8 A.L.R.3d 590.

Am. Jur.
31 Am. Jur. 2d, Executors and Administrators § 202.

CJS.
33 C.J.S., Executors and Administrators §§ 40, 41.

§ 91-7-39. Administration with will annexed.

If there be no executor named in any last will and testament, or if the executors named all renounce the executorship or, being required to qualify, shall all refuse or fail to do so or shall refuse or wilfully neglect, for the space of forty days after the death of the testator, to exhibit the will and testament for probate or shall all be disqualified, then administration with the will annexed shall be granted to the person who would be entitled to administer according to the rule prescribed for granting administration. Before granting such administration, each executor named in the will and testament who has not renounced the executorship shall be summoned to show cause why administration should not be granted. If any executor named be absent from the state at the time of the probate of the will and administration should be granted during his absence, such executor shall be allowed forty days after his return to make application for letters testamentary and, on his qualifying, the letters of administration shall be revoked; and the administrator shall deliver all the estate which has come to his hands to the executor and settle the account of his administration.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (31); 1857, ch. 60, art. 52; 1871, § 1108; 1880, § 1980; 1892, § 1833; 1906, § 2008; Hemingway's 1917, § 1673; 1930, § 1617; 1942, § 513.

Cross References — Power of bank to act as executor or administrator, see § 81-5-33.

RESEARCH REFERENCES

Am. Jur.
31 Am. Jur. 2d, Executors and Administrators § 1014 et seq.
10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 1271-1273 (petition or application for letters of administration de bonis non with will annexed); Form 1275 (order appointing administrator de bonis non with will attached).

CJS.
34 C.J.S., Executors and Administrators §§ 1143-1153.

§ 91-7-41. Oath and bond of executor or administrator with will annexed.

Every executor or administrator with the will annexed, at or prior to the time of obtaining letters testamentary or of administration, shall take and subscribe the following oath, viz.:

> "I do swear that the writing exhibited by me is the true last will and testament of ________, as far as I know and believe, and that I, if and when appointed as executor, will well and truly execute the same according to its tenor, and discharge the duties required by law." In the case of an administrator with the will annexed, then say "I, as administrator, will," and "when appointed as administrator, will" etc.

He will also give bond in such penalty as will be equal to the full value of the estate, and with such sureties as may be approved of by the court or by the clerk, payable to the state, with the following conditions, viz.:

> "The condition of this bond is, that if the above bound ________, as executor of the last will and testament of ________, shall well and truly execute the will as far as the same may be consistent with law, and faithfully discharge all the duties required of him by law, then this obligation shall be void." If the obligor be administrator with the will annexed, then say "the above bound ________, as administrator with the will of ________ annexed, will," etc.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (33); 1857, ch. 60, art. 53; 1871, § 1109; 1880, § 1981; 1892, § 1834; 1906, § 2009; Hemingway's 1917, § 1674; 1930, § 1618; 1942, § 514; Laws, 2001, ch. 422, § 1, eff from and after July 1, 2001.

Cross References — Cancellation or reduction of bond, see § 9-5-103.
Bond of administrator de bonis non, see §§ 91-7-69, 91-7-71.
Bond of temporary administrator, see § 91-7-55.
Oath and bond of administrator, see § 91-7-67.
Bond and oath of county administrator, see § 91-7-75.
Additional bond for county administrator, see § 91-7-77.
Recording of bond, see § 91-7-311.
New bonds for executors and administrators, see §§ 91-7-315, 91-7-317.
Credit for cost of bond, see § 91-7-319.

JUDICIAL DECISIONS

1. In general.

The liability of the surety of an administrator c. t. a. must be determined by the condition of the bond to the effect that the administrator should faithfully discharge all the duties required of him by law, when considered in connection with Code 1942, § 514. Fidelity & Deposit Co. v. Doughtry, 181 Miss. 586, 179 So. 846, 1938 Miss. LEXIS 99 (Miss. 1938).

RESEARCH REFERENCES

ALR.

What funds, not part of the estate, are received under color of office so as to render liable surety on executor's or administrator's bond. 82 A.L.R.3d 869.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators §§ 312, 313, 321, 322.

9A Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 341 et seq. (administration bonds).

CJS.

33 C.J.S., Executors and Administrators §§ 90-99.

34 C.J.S., Executors and Administrators §§ 325.

§ 91-7-43. Executor as residuary legatee.

If the executor be a residuary legatee, he may, instead of the bond required of other executors, give bond payable to the state in a sum, with two or more sureties, to the satisfaction of the court or clerk, conditioned to pay all the debts and legacies of the testator within one year. In such case the executor shall not be required to return an inventory or appraisement, but he shall file with his petition a sworn statement of the amount of the indebtedness of the testator, so far as he can ascertain the same. The giving of such bond shall not discharge the estate of the testator from liability for the payment of his debts; and such bond shall be subject to suits in the same manner as the bond required of other executors.

HISTORY: Codes, 1892, § 1835; 1906, § 2010; Hemingway's 1917, § 1675; 1930, § 1619; 1942, § 515.

§ 91-7-45. When bond not required.

If the testator, by will, direct that his executor shall not be required to give bond, then none shall be required unless the court or the clerk, at the time of granting the letters or afterwards, shall have reason to require bond, in which event it shall be the duty of the court or clerk to require bond with sufficient sureties. If any creditor of such testator petition the court or the clerk in vacation, under oath, stating his claim and that he believes he is in danger of losing his demand, or some of it, by the bad management of said estate or by the personal insolvency of the executor, such executor, having had five days' notice of the petition, shall be required to give a bond with sureties, to be approved by the court or clerk in vacation, payable to said creditor in a sufficient sum to cover his legal demand, and conditioned to save him from all loss by reason of any act or omission of such executor. Instead of such bond, the executor may give bond as if he had not been relieved from it by the will. If the bond required in either case be not given, it shall be the duty of the court or clerk to remove the executor and grant letters of administration, with the will annexed, to some other person.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (34); 1857, ch. 60, art. 54; 1871, § 1110; 1880, § 1982; 1892, § 1836; 1906, § 2011; Hemingway's 1917, § 1676; 1930, § 1620; 1942, § 516.

JUDICIAL DECISIONS

1. In general.

In a probate proceeding, a chancellor did not err in not requiring the executor, the decedents' son, to pay a bond because the will contained a provision that waived any bond. Carson Family Trust v. Carson (In re Estate of Carson), 986 So. 2d 1072, 2008 Miss. App. LEXIS 434 (Miss. Ct. App. 2008).

Executrix who was life tenant under will and who asserted absolute estate in all of property bequeathed, held properly required to give bond, notwithstanding testator's direction no bond was required. Brown v. Franklin, 157 Miss. 38, 127 So. 561, 1930 Miss. LEXIS 256 (Miss. 1930).

RESEARCH REFERENCES

ALR.

Testamentary option to purchase estate property as surviving optionee's death. 18 A.L.R.4th 578.

§ 91-7-47. Rights and duties of executor or administrator with will annexed.

(1) Every executor or administrator with the will annexed, who has qualified, shall have the right to the possession of all the personal estate of the deceased, unless otherwise directed in the will; and he shall take all proper steps to acquire possession of any part thereof that may be withheld from him, and shall manage the same for the best interest of those concerned, consistently with the will, and according to law. He shall have the proper appraisements made, return true and complete inventories except as otherwise provided by law, shall collect all debts due the estate as speedily as may be, pay all debts that may be due from it which are properly probated and registered, so far as the means in his hands will allow, shall settle his accounts as often as the law may require, pay all the legacies and bequests as far as the estate may be sufficient, and shall well and truly execute the will if the law permit. He shall also have a right to the possession of the real estate so far as may be necessary to execute the will, and may have proper remedy therefor.

(2) In addition to the rights and duties contained in this section, he shall also have those rights, powers and remedies as set forth in Section 91-9-9.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (32); 1857, ch. 60, art. 55; 1871, § 1111; 1880, § 1983; 1892, § 1837; 1906, § 2012; Hemingway's 1917, § 1677; 1930, § 1621; 1942, § 517; Laws, 1994, ch. 589, § 3; Laws, 1999, ch. 374, § 1; Laws, 2002, ch. 612 , § 1; Laws, 2008, ch. 452, § 1, eff from and after passage (approved Apr. 8, 2008).

Editor's Notes — Section 91-9-9, referred to in (2), was repealed by Laws of 2014, ch. 421, § 105, effective July 1, 2014. For present similar provisions, see § 91-8-816.

Cross References — Accounts of executors in savings associations, see § 81-12-139.

Additional obligations of fiduciary, see Miss. Uniform Chancery Court Rules 6.01 et seq.

JUDICIAL DECISIONS

1. In general.

Decedent's son appointed as temporary administrator of the decedent's son did not fail to file a required accounting because (1) the chancellor found such an accounting was filed, and (2) the decedent's daughter admitted possessing a copy of the accounting. Flowers v. Flowers (In re Estate of Flowers), 269 So. 3d 120, 2018 Miss. App. LEXIS 2 (Miss. Ct. App. 2018).

Judicial estoppel applied because plaintiff had a duty to discover all of the assets of his father's estate before he agreed to close the estate and he could not now take a position that was opposed to his previous position which was to his benefit at the time. Furthermore, plaintiff was aware of the properties at the time he closed the estate. Johnson v. Herron, 33 So. 3d 1160, 2009 Miss. App. LEXIS 744 (Miss. Ct. App. 2009), cert. denied, 34 So. 3d 1176, 2010 Miss. LEXIS 227 (Miss. 2010).

An executor's actions constituted civil contempt and did not measure up to the standard of prudence, caution and trust required of an executor where the estate was deprived of a substantial sum of money largely due to his inaction, even though he claimed that he relied on the advice of counsel for everything he did as executor. Holloway v. Holloway (In re Estate of Holloway), 631 So. 2d 127, 1993 Miss. LEXIS 603 (Miss. 1993).

Although one person may be named as both executrix and testamentary trustee, the executrix performs only such duties and powers granted to her as the law and will designates, and the power designated by the will only for the testamentary trustee does not transfer to the executrix unless the will so designates. Harper v. Harper, 491 So. 2d 189, 1986 Miss. LEXIS 2508 (Miss. 1986).

Where a testamentary trust has not come into being, the authority to act as executrix, of one who is named both as executrix and as testamentary trustee by the will, is not governed by the trust powers granted to her as testamentary trustee. Harper v. Harper, 491 So. 2d 189, 1986 Miss. LEXIS 2508 (Miss. 1986).

Court authority is not per se necessary to authorize an executrix with will annexed to exercise the estate's stock voting rights in a closely held corporation. Harper v. Harper, 491 So. 2d 189, 1986 Miss. LEXIS 2508 (Miss. 1986).

Where will did not confer authority, neither executor nor administrator with will annexed had authority to collect rents on realty except during year of testator's death. Fidelity & Deposit Co. v. Doughtry, 181 Miss. 586, 179 So. 846, 1938 Miss. LEXIS 99 (Miss. 1938).

Action of administrator with will annexed in leasing realty following year of testator's death, without court authority, was in his capacity as tenant in common with coheirs and codevisees and not as administrator. Fidelity & Deposit Co. v. Doughtry, 181 Miss. 586, 179 So. 846, 1938 Miss. LEXIS 99 (Miss. 1938).

Where to follow terms of will by not operating farm beyond certain period would result in permanent impairment and partial destruction of estate, court could authorize executor or trustee to operate farm for another year. Low v. First Nat'l Bank & Trust Co., 162 Miss. 53, 138 So. 586, 1932 Miss. LEXIS 102 (Miss. 1932).

Powers of executor co-extensive with will. Ricks v. Johnson, 134 Miss. 676, 99 So. 142, 1924 Miss. LEXIS 288 (Miss. 1924).

Executor entitled to execute trust where trustee not named; court must appoint named person executor if qualified. Ricks v. Johnson, 134 Miss. 676, 99 So. 142, 1924 Miss. LEXIS 288 (Miss. 1924).

Heirs and devisees should have notice and hearing on proceeding by executor to obtain possession of real estate, if executor not given specific control by will and there was sufficient cash to pay debts. Miles v. Fink, 119 Miss. 147, 80 So. 532, 1918 Miss. LEXIS 24 (Miss. 1918).

Executor before discharge cannot acquire tax title to land so as to defeat title of life devisee and remainderman. Deanes v. Whitfield, 107 Miss. 273, 65 So. 246, 1914 Miss. LEXIS 78 (Miss. 1914).

Chancery court cannot enlarge statutory powers of administrator. Alexander v.

Herring, 99 Miss. 427, 55 So. 360, 1910 Miss. LEXIS 34 (Miss. 1910).

Chancery court cannot authorize administrator to engage in business with estate funds. Alexander v. Herring, 99 Miss. 427, 55 So. 360, 1910 Miss. LEXIS 34 (Miss. 1910).

Executor or administrator acting within authority is as much bound by estoppel as individuals. Caldwell v. Kimbrough, 91 Miss. 877, 45 So. 7, 1907 Miss. LEXIS 167 (Miss. 1907).

RESEARCH REFERENCES

ALR.

Power and responsibility of executor or administrator to compromise claim due estate. 72 A.L.R.2d 191.

Power and responsibility of executor or administrator to compromise claim against estate. 72 A.L.R.2d 243.

Power and responsibility of executor or administrator as to compromise or settlement of action or cause of action for death. 72 A.L.R.2d 285.

Judicial resolution of impasse between joint executors or administrators where concurrent action is required. 85 A.L.R.3d 1124.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 1029 et seq.

8 Am. Jur. Legal Forms 2d, Executors and Administrators § 104:55 (letter from attorney to executor or administrator of estate as to duties and liabilities).

8 Am. Jur. Legal Forms 2d, Executors and Administrators § 104:89 et seq. (custody and management of estate); § 104:157 et seq. (creditors' claims).

CJS.

34 C.J.S., Executors and Administrators §§ 1151-1153.

§ 91-7-49. Directions of will to be followed.

Whenever any last will and testament shall empower and direct the executor as to the sale of property, the payment of debts and legacies, and the management of the estate, the directions of the will shall be followed by the executor, and the provisions herein contained shall not so operate as to require the executor to pursue a different course from that prescribed in the will, if it be lawful. If land be directed by the will to be sold, the sale shall be made and the proper conveyance executed by the executors, or such of them as shall undertake the execution of the will, or by the person appointed by the will to execute the trust. If the executor fail to qualify or die before he execute the will, and if the person appointed fail to execute the trust, the sale shall be made by the administrator with the will annexed. The executor shall, in all cases, make publication for creditors to probate their claims, as required in the administration of the estates of intestates and with like effect, any provision of the will to the contrary notwithstanding.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (113); 1857, ch. 60, art. 136; 1871, § 1194; 1880, § 1984; 1892, § 1838; 1906, § 2013; Hemingway's 1917, § 1678; 1930, § 1622; 1942, § 518; Laws, 1940, ch. 232.

Cross References — Additional provisions governing conduct of executor, see Miss. Uniform Chancery Court Rules 6.01 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Sale of property.
3. —Exercise of discretion.
4. —Notice; advertising.
5. —Taxes and expenses; surcharges.
6. —Multiple executors.

1. In general.

Chancery court did not err by considering the final accounting, the petition to close a decedent's estate, and the wife's objections to the final accounting because the daughter, who was appointed executor, repeatedly failed to comply with the chancery court's orders; as executor, the daughter bore a responsibility to administer and close the estate, and she could not complain of errors she caused by failing to properly fulfill her duty. Chester v. Labasse (In re Estate of Labasse), 242 So. 3d 167, 2017 Miss. App. LEXIS 540 (Miss. Ct. App. 2017), cert. denied, 246 So. 3d 70, 2018 Miss. LEXIS 192 (Miss. 2018).

Executrix was properly surcharged for payment of decedent's debts which had not been probated, registered, or allowed. Harper v. Harper, 491 So. 2d 189, 1986 Miss. LEXIS 2508 (Miss. 1986).

Crops growing on devised land at time of death of testatrix which are not needed by executor for payment of debts or cost of administration of estate pass to devisee of land rather than into estate for benefit of residuary legatees where will devised land and all trucks, farm implements, tractors and equipment thereon and directed that immediately after death of devisor devisee should be vested with entire control over her part of property. Oberst v. Mullens, 43 So. 2d 560 (Miss. 1949).

Intention of testator ascertained from entire will given effect if not illegal. Lesche v. Cutrer, 135 Miss. 469, 99 So. 136, 1924 Miss. LEXIS 1 (Miss. 1924).

Where a will creates an express trust for the payment of debts, by virtue of this section [Code 1942, § 518], the statute of limitations barring claims unless probated within one year after notice to creditors has no application. Gordon v. McDougall, 84 Miss. 715, 37 So. 298, 1904 Miss. LEXIS 96 (Miss. 1904).

The statute of limitations is no bar to the payment of unprobated claims in carrying out a will creating an express trust for the payment of debts. Gordon v. McDougall, 84 Miss. 715, 37 So. 298, 1904 Miss. LEXIS 96 (Miss. 1904).

Executors who have paid unprobated claims in pursuance of wills creating express trusts for their payment are entitled to be credited therewith in their accounts. Gordon v. McDougall, 84 Miss. 715, 37 So. 298, 1904 Miss. LEXIS 96 (Miss. 1904).

2. Sale of property.

Where a power of sale of the real estate is conferred by a testator because of his personal trust and confidence in the named executors neither the surviving executor, where more than one is designated, nor an administrator with the will annexed, where the named executors fail to qualify, die or resign, can convey title to the real property of testator without a valid order of court authorizing and empowering the sale and conveyance. Batson v. Humble Oil & Refining Co., 213 Miss. 340, 56 So. 2d 828, 1952 Miss. LEXIS 372 (Miss. 1952).

Where will gives power of sale to pay legacies, or for distribution, without stating by whom the sale is to be made, the executor takes the power by implication. Davis v. Sturdivant, 197 Miss. 139, 19 So. 2d 499, 1944 Miss. LEXIS 284 (Miss. 1944).

Under will providing "after my house and the rest of jewelry have been sold, I want the money equally divided between two named legatees," and "should either boy die before of age this money to revert to the estate for further distribution of other request," executrix had implied power to sell the realty, although proceeds therefrom were not to be delivered until the legatees became of age. Davis v. Sturdivant, 197 Miss. 139, 19 So. 2d 499, 1944 Miss. LEXIS 284 (Miss. 1944).

Sale by executrix of realty under power of sale in will is not a judicial sale, and needs no court order justifying it. Davis v. Sturdivant, 197 Miss. 139, 19 So. 2d 499, 1944 Miss. LEXIS 284 (Miss. 1944).

Gratuitous advice given by chancellor pursuant to request by executrix concerning implied power under will to sell realty does not diminish power of executrix in respect thereto. Davis v. Sturdivant, 197 Miss. 139, 19 So. 2d 499, 1944 Miss. LEXIS 284 (Miss. 1944).

In a contest between residuary legatees of a will and beneficiaries of an alleged gift inter vivos of certain separate stock which was by the will directed to be sold by the executors along with other assets of the estate for the payment of numerous legacies, wherein the residuary legatee sought to compel a more complete inventory by including such corporate stock, the burden of proof was upon the surviving executor and those claiming the stock, not as purchasers for value, to prove that such stock was not a part of the assets of the estate being administered. Lindeman's Estate v. Herbert, 188 Miss. 842, 193 So. 790, 1940 Miss. LEXIS 13 (Miss. 1940).

Authority conferred upon executors to sell lands held not discretionary, but to require sale at all events. Glidewell v. Pannell, 158 Miss. 249, 130 So. 288, 1930 Miss. LEXIS 45 (Miss. 1930).

Executor, unable to sell testator's business at public auction, may be authorized by court to sell same to beneficiary for herself and as guardian of infant beneficiary. United States Fidelity & Guaranty Co. v. State, 110 Miss. 16, 69 So. 1007, 1915 Miss. LEXIS 20 (Miss. 1915).

3. —Exercise of discretion.

Decision to sell, made by executor, given discretion by will to sell or to operate wholesale grocery business, cannot be said to be other than act of ordinarily prudent business man, when success of business was due to decedent, whose place could not be filled because of war, great uncertainty prevailed in business field, good sale could be made, and objectors showed no certainty of profit from operations, or better sale later after attempt at continuation of business. Walker v. First Nat'l Bank, 204 Miss. 696, 38 So. 2d 98, 1948 Miss. LEXIS 398 (Miss. 1948).

Supreme court will not say that confirmation of sale of wholesale grocery business by executor, acting under authority of will, was manifestly wrong, when it is not pointed out by what means or manner a higher price could have been obtained for the assets of the estate nor in what respect beneficiaries in will suffered any loss. Walker v. First Nat'l Bank, 204 Miss. 696, 38 So. 2d 98, 1948 Miss. LEXIS 398 (Miss. 1948).

4. —Notice; advertising.

Sale of decedent's property without legal citation to beneficiaries in will is valid where will relieves executor from legal citation to interested parties. Walker v. First Nat'l Bank, 204 Miss. 696, 38 So. 2d 98, 1948 Miss. LEXIS 398 (Miss. 1948).

Objection to executor's sale of wholesale grocery business on ground that it was not sufficiently advertised is not well taken when, under the terms of will under which sale was made, no public notice of proposed sale was required to be given. Walker v. First Nat'l Bank, 204 Miss. 696, 38 So. 2d 98, 1948 Miss. LEXIS 398 (Miss. 1948).

Objection to executor's sale of wholesale grocery business on ground that it was not sufficiently advertised is not well taken where publication containing elements of sale was made in three newspapers for period of approximately a week, prospective bidders were notified by telephone and letters, many people inspected property, successful bid exceeded appraised value, and objectors produced no proof more than possibility or speculation that had sale been postponed for ten or twenty days there would have been higher, or more numerous, bids on the later date. Walker v. First Nat'l Bank, 204 Miss. 696, 38 So. 2d 98, 1948 Miss. LEXIS 398 (Miss. 1948).

Fact that no notice was given to interested parties respecting sale of realty by executrix under power of sale in will, either in proceedings for sale or those whereby directions of court were sought, does not constitute a valid defense in executrix's suit against purchaser at sale for specific performance. Davis v. Sturdivant, 197 Miss. 139, 19 So. 2d 499, 1944 Miss. LEXIS 284 (Miss. 1944).

5. —Taxes and expenses; surcharges.

Executrix would be surcharged for the amount the testamentary trust property was damaged or put in jeopardy due to her mortgaging of estate's unencumbered real property as security for debt incurred by testator which was never probated. Harper v. Harper, 491 So. 2d 189, 1986 Miss. LEXIS 2508 (Miss. 1986).

Reasonable expenditures for better sale of land were properly made out of general funds of estate where will directed sale of land and payment of proceeds, in different amounts, to special legatees with provision for reduction in proper proportion of each in event property did not sell for total amount devised, since special legatees are to be favored over residuary legatees to end that they may receive entire amount bequeathed to them respectively if property designated for that purpose could be caused to bring enough for that purpose by reasonable expenditures to promote advantageous sale. Oberst v. Mullens, 43 So. 2d 560 (Miss. 1949).

Unpaid taxes did not constitute valid defense to executrix's suit for specific performance against purchaser of realty sold under power of sale in will, since executrix has duty under Code 1942, § 572 to pay the taxes and such obligation can be readily accounted for under the decree for specific performance. Davis v. Sturdivant, 197 Miss. 139, 19 So. 2d 499, 1944 Miss. LEXIS 284 (Miss. 1944).

In compliance with decree for specific performance of realty sold by executrix under power of sale in will, purchaser is entitled to deed free from lien for unpaid taxes. Davis v. Sturdivant, 197 Miss. 139, 19 So. 2d 499, 1944 Miss. LEXIS 284 (Miss. 1944).

6. —Multiple executors.

A testamentary power of sale conferred on two named executors did not survive the death of one of them and sales of real property made by the surviving executor were set aside where the intention of the testator, as indicated by repeated references in the will to actions to be taken by the co-executors in their joint discretion, was that the power of the remaining executor not survive. Reynolds v. State, 331 So. 2d 913, 1976 Miss. LEXIS 1887 (Miss. 1976).

The court would not order specific performance of a contract for the sale of land, which contract was signed by only one of two coexecutors where the second coexecutor knew nothing of the execution of the will and had not authorized the other executor to sign it for him, and where the contract itself did not purport to be signed by the executor for himself and for the coexecutor as joint executors, and where, although the second coexecutor signed a deed as contemplated by the contract, such deed was delivered not to the purchaser but merely to the attorney for the two coexecutors, such act not constituting delivery of the deed nor a ratification of the contract by the second coexecutor. Carter v. Hurst, 234 So. 2d 616, 1970 Miss. LEXIS 1412 (Miss. 1970).

Where will required sale of lands at all events, power vested in executors could be exercised by survivors, and court erroneously directed different course from that prescribed. Glidewell v. Pannell, 158 Miss. 249, 130 So. 288, 1930 Miss. LEXIS 45 (Miss. 1930).

§ 91-7-51. Effect of receipt for money by executor or trustee.

The receipt by an executor or any trustee, whether under a will or other instrument, for any money payable to him in the execution of his trust shall discharge the person paying it from any liability to see to the application of the money, unless otherwise expressly provided in the instrument which creates the trust.

HISTORY: Codes, 1880, § 1985; 1892, § 1839; 1906, § 2014; Hemingway's 1917, § 1679; 1930, § 1623; 1942, § 519.

JUDICIAL DECISIONS

1. In general.

If plaintiff had had a valid claim to the proceeds of an estate sale, his sole legal recourse would have been to probate a claim against the estate pursuant to § 91-7-51, and since he did not do so, he was barred from claiming the proceeds of the sale of minerals from the funds of the estate. Kelly v. Shoemake, 460 So. 2d 811, 1984 Miss. LEXIS 2019 (Miss. 1984).

§ 91-7-53. Temporary administrator.

Whenever it shall be necessary for the care and preservation of the estate of a decedent before the grant of letters testamentary, or of administration, to the person entitled thereto, the chancery court or chancellor in vacation, or the clerk of such court, on the petition of any creditor or other interested person, shall appoint a suitable person to be known as "temporary administrator." The person named as executor or the person apparently entitled to letters of administration may be appointed temporary administrator, unless the court shall find that the circumstances require the appointment of a different person.

Whenever an appeal shall be taken from the grant of letters testamentary, or of administration, or whenever a last will and testament shall be contested, the chancery court or chancellor in vacation, on petition of any interested person, may appoint a temporary administrator if it shall appear necessary for the protection of the rights of the parties, and may make such appointment on such terms and impose such conditions as may seem proper.

The powers of such temporary administrator may be special or general, as the court may find proper, and he may be authorized to take charge of, preserve, and administer the estate until the appeal or contest shall be determined. Letters may be issued to him in ordinary form, except that he shall be therein designated as temporary administrator, and any terms or conditions imposed shall be stated therein; and the letters shall state that he is to act only until another appointment shall be made, either temporary or permanent.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (13); 1857, ch. 60, art. 30; 1871, § 1194; 1880, § 1986; 1892, § 1840; 1906, § 2015; Hemingway's 1917, § 1680; 1930, § 1624; 1942, § 520; Laws, 1900, ch. 94; Laws, 1948, ch. 228, § 1.

Cross References — Letters of administration, see § 91-7-63 et seq.

Additional provisions governing the conduct of executors, administrators, and other fiduciaries, see Miss. Uniform Chancery Court Rules 6.01 et seq.

JUDICIAL DECISIONS

1. In general.

It was not an abuse of discretion to appoint a decedent's son as the administrator of the decedent's estate, even though the son was not so named in the decedent's will, because (1) the administrator named in the will died, (2) the court had considerable discretion to appoint a temporary administrator to conserve the estate, and (3) the decedent's daughters received sufficient notice of the appointment during the course of the litigation.

Flowers v. Flowers (In re Estate of Flowers), 269 So. 3d 120, 2018 Miss. App. LEXIS 2 (Miss. Ct. App. 2018).

Because a chancellor applied the wrong legal standard and incorrectly believed that only uncontested evidence was sufficient to remove the executor of the decedent's estate, remand was necessary for a determination of whether a temporary executor was to be appointed. On remand, the chancellor was to use the correct legal standard, with the understanding that it is within the chancellor's discretion to remove the executor even though the will contestant's evidence may have been contested. Parker v. Benoist, 160 So. 3d 198, 2015 Miss. LEXIS 113 (Miss. 2015).

On a will contest, the chancellor was justified in refusing to appoint a temporary administrator of the estate when, at the time the opponent of the will filed his petition to probate a later will in solemn form, the executrix, acting under an earlier will previously admitted to probate, had fully administered the estate, including notice to creditors and payment of all debts properly probated and nothing remained to be done except final distribution of the assets after a final decree of the court terminating the litigation. Cupit v. International Paper Co., 196 So. 2d 521, 1967 Miss. LEXIS 1489 (Miss. 1967).

Where a will probated in common form is contested, the executor may be temporarily removed pending the contest, and a temporary administrator appointed, without first finding the executor disqualified or guilty of misconduct. Sandifer v. Sandifer, 237 Miss. 464, 115 So. 2d 46, 1959 Miss. LEXIS 491 (Miss. 1959).

In a proceeding on a petition for appointment of a permanent administrator, where the chancery court's determination of the heirs at law was not final because of a pending appeal, the appropriate action was appointment of a suitable person to act as a temporary administrator until the legal heirs of the decedent were finally determined. In re Estate of Burnside, 227 Miss. 110, 85 So. 2d 817, 1956 Miss. LEXIS 660 (Miss. 1956).

The status of an administrator is an issue distinct from other matters and it is not necessary that an appeal from an order withdrawing letters of administration await the final determination of the estate, and to hold otherwise would defeat the claim of a petitioner by permitting the incumbent to serve throughout the entire administration. Wells v. Boatner, 216 Miss. 108, 61 So. 2d 662, 1952 Miss. LEXIS 622 (Miss. 1952).

Chancery court has power under this section [Code 1942, § 520] to continue widow of deceased testator as administratrix for purpose of sale of land to pay debts in absence of sufficient personalty therefore, and failure of the court, after the existence of the will became known, to change the letters of administration granted to widow and sole heir at law to letters as temporary administratrix pending a will contest, did not render the action of the court absolutely void in ordering the land sold by her, but only voidable at most, since the court had constitutional jurisdiction of the subject matter and jurisdiction of all the parties in interest. Gill v. Johnson, 206 Miss. 707, 40 So. 2d 600, 1949 Miss. LEXIS 295 (Miss. 1949).

RESEARCH REFERENCES

ALR.

Loss of right to be appointed executor by delay in presenting will for probate or in seeking letters testamentary. 45 A.L.R.2d 916.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 1044 et seq.

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 1191-1195 (petition or application for appointment of special or temporary administrator); Forms 1209-1211 (letters of special or temporary administration).

CJS.

34 C.J.S., Executors and Administrators §§ 1154-1156 et seq.

§ 91-7-55. Estate to be appraised.

Before the temporary administrator shall act as such, he shall take and subscribe an oath at or prior to the time of his appointment to faithfully discharge the duties required of him by law as such temporary administrator, and shall give bond, payable to the state, in such penalty and with such sureties as may be approved by the court or clerk, conditioned for the faithful discharge of the duties required of him as such temporary administrator by law or by order of the court or clerk. Thereupon, the estate shall be appraised as now provided by law upon the grant of letters testamentary or of administration, unless the same shall be dispensed with by the court or clerk. The temporary administrator shall make and return to the court a complete inventory of the estate, as is required by law to be made by executors in general or regular administrators, and, as soon as practicable, shall publish the notice provided by law to be published by executors and administrators, requiring creditors to have their claims against the estate probated and registered. All the provisions of the law governing such notice, the proof and registering of claims, and the bar of such as are not proved and registered shall apply when the notice is published by the temporary administrator, as when published by an executor or a general or regular administrator. When the temporary administrator shall have published such notice, no further notice to creditors to have their claims probated and registered shall be given or published upon any subsequent grant of letters testamentary or of administration; and where the estate has been appraised upon the appointment of a temporary administrator, no other appraisement shall be made upon the grant of letters testamentary or of the administration thereafter, unless the court or clerk shall deem the appraisement necessary or advisable.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (37); 1857, ch. 60, art. 56; 1871, § 1112; 1880, § 1987; 1892, § 1841; 1906, § 2016; Hemingway's 1917, § 1681; 1930, § 1625; 1942, § 521; Laws, 2001, ch. 422, § 2, eff from and after July 1, 2001.

Cross References — Inventory generally, see § 91-7-93 et seq.

Additional provisions governing the conduct of executors, administrators, and other fiduciaries, see Miss. Uniform Chancery Court Rules 6.01 et seq.

RESEARCH REFERENCES

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 493.

9A Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 561 et seq. (appointment and qualification of appraisers).

CJS.

34 C.J.S., Executors and Administrators § 202 et seq.

§ 91-7-57. Powers of temporary administrator.

The temporary administrator shall have power, and it shall be his duty, to collect the goods, chattels, personal property and debts of the decedent and to give acquittances for debts and liabilities upon payment. He may sue and be sued in all cases in which a general or regular administrator may sue or be sued; and suits brought by or against him shall not abate by the termination of his authority, but may be prosecuted by or against the executor or administrator thereafter appointed, and judgments recovered by or against him may be enforced by or against the executor or regular administrator thereafter appointed. The court, or chancellor in vacation, may at any time authorize the temporary administrator to sell such of the estate as may be perishable, likely to deteriorate in value, or be expensive to keep, and to dispose of any crops for cash, and to account for such property sold or disposed of. The court or chancellor, in ordering the sale of such property, shall take into consideration any disposition thereof by last will and testament, in case there be such, and shall order the sale of such property or not, as may be best for the parties in interest. After ninety (90) days from the time the temporary administrator was appointed and the time for probating claims has expired, the court or chancellor in vacation may order the temporary administrator to pay the claims of creditors and to hold the balance of the estate to await the ultimate probate or defeat of such last will and testament. In case the court, or chancellor in vacation, shall order the temporary administrator to pay creditors and make distribution, or to do either, he shall have all the powers and rights for the purpose over the estate, real and personal, that are conferred by law upon general or regular administrators; and all laws governing the acts and duties of a general or regular administrator shall then apply to and govern the temporary administrator.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (37); 1857, ch. 60, art. 57; 1871, § 1113; 1880, § 1988; 1892, § 1842; 1906, § 2017; Hemingway's 1917, § 1682; 1930, § 1626; 1942, § 522; Laws, 1936, ch. 240; Laws, 1975, ch. 373, § 2, eff from and after January 1, 1976.

Cross References — Power of executor or administrator to sue for rent due, see § 89-7-13.

Additional provisions governing the conduct of executors, administrators, and other fiduciaries, see Miss. Uniform Chancery Court Rules 6.01 et seq.

JUDICIAL DECISIONS

1. In general.

Executor or administrator acting within his authority is as much bound by estoppel as individuals. Caldwell v. Kimbrough, 91 Miss. 877, 45 So. 7, 1907 Miss. LEXIS 167 (Miss. 1907).

RESEARCH REFERENCES

ALR.

Waiver or tolling of statute of limitations by executor or administrator. 8 A.L.R.2d 660.

Power and responsibility of executor or administrator to compromise claim due estate. 72 A.L.R.2d 191.

Power and responsibility of executor or administrator to compromise claim against estate. 72 A.L.R.2d 243.

Power and responsibility of executor or administrator as to compromise or settlement of action or cause of action for death. 72 A.L.R.2d 285.

Am. Jur.
31 Am. Jur. 2d, Executors and Administrators §§ 1048, 1054.

CJS.
34 C.J.S., Executors and Administrators §§ 1167-1172.

§ 91-7-59. Compensation of temporary administrator.

On the grant of letters testamentary or of administration, the powers of a temporary administrator shall cease, and it shall be his duty at once to settle his accounts with the court or chancellor in vacation and to deliver all the estate that may be in his hands to the person to whom letters testamentary or of administration shall have been granted. In case of refusal, the court or chancellor may proceed against him by attachment and impose a fine, as for a contempt, not exceeding twenty percent (20%) upon the amount of the estate in his hands; and his bond may be put in suit by the executor or administrator. The temporary administrator shall, at the same time, furnish the executor or administrator with a list of all judgments or suits to which he is a party. The court, or chancellor in vacation, may allow the temporary administrator such compensation as may be just, not exceeding five percent (5%) on the amount of the estate inventoried by him.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (40); 1857, ch. 60, art. 58; 1871, §§ 1114, 1115; 1880, §§ 1989, 1990; 1892, § 1843; 1906, § 2018; Hemingway's 1917, § 1683; 1930, § 1627; 1942, § 523.

Cross References — Allowance for losses, see § 91-7-299.

JUDICIAL DECISIONS

1. In general.
Temporary administrator held entitled to compensation for, and necessary attorney fees incurred in, performance of his duties on same basis as regular administrator, where order appointing temporary administrator directed him to pay deceased's debts and all but his incidental acts and expenditures were authorized by court and his services were for best interest of estate. King v. Wade, 175 Miss. 72, 166 So. 327, 1936 Miss. LEXIS 8 (Miss. 1936).

Allowance of compensation and attorney's fees to administrator within limits prescribed by statute is addressed to sound discretion of chancery court. King v. Wade, 175 Miss. 72, 166 So. 327, 1936 Miss. LEXIS 8 (Miss. 1936).

Chancery court's allowance of compensation to temporary administrator which was less than three per cent of the estate as inventoried, and allowance for attorney's fees of slightly less than four per cent of estate, held not abuse of discretion. King v. Wade, 175 Miss. 72, 166 So. 327, 1936 Miss. LEXIS 8 (Miss. 1936).

Supreme court will not interfere with chancery court's exercise of discretion in regard to allowance of compensation and attorney's fees to administrator, except in cases of manifest and flagrant abuse. King v. Wade, 175 Miss. 72, 166 So. 327, 1936 Miss. LEXIS 8 (Miss. 1936).

RESEARCH REFERENCES

ALR.
Authority of probate court to depart from statutory schedule fixing amount of executor's commissions and attorneys'

fees. 40 A.L.R.4th 1189.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 1041.

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 1451 et seq. (compensation and allowances).

§ 91-7-61. Administrator to institute suits.

If necessary, an administrator may be appointed to institute and conduct suits, whose power shall cease when the litigation is entirely closed and who shall only account for the proceeds of the suit.

HISTORY: Codes, 1880, § 1992; 1892, § 1845; 1906, § 2019; Hemingway's 1917, § 1684; 1930, § 1628; 1942, § 524.

Cross References — Actions by administrator de bonis non, see § 91-7-71.

Actions which accrue during administration, see § 91-7-231.

Actions between co-administrators, see § 91-7-247.

Suits by foreign executors or administrators, see § 91-7-259.

Requirement that administrator must, unless he is licensed to practice law, retain solicitor, see Miss. Uniform Chancery Court Rule 6.01.

JUDICIAL DECISIONS

1. In general.

Widow's failure to qualify as administratrix did not adversely affect the rights of husband's insurer to recover on items covered by a subrogation agreement and the subrogation provisions of policy since the insurer had the right under Code 1972 §§ 91-7-61, 91-7-63, to apply for and receive letters of administration to conduct whatever suits it deemed necessary to enforce its right. Thornton v. Insurance Co. of North America, 287 So. 2d 262, 1973 Miss. LEXIS 1329 (Miss. 1973).

Decree in proceeding for appointment of administratrix and contract with attorney on part of administratrix for prosecution of death action can have no effect on right of widow and children to institute and maintain suit. Mississippi Power & Light Co. v. Smith, 169 Miss. 447, 153 So. 376, 1934 Miss. LEXIS 58 (Miss. 1934).

Railroad defendant cannot move for revocation of letters of administration granted for purpose of prosecuting suit for personal injuries. Yazoo & M. V. R. Co. v. Jeffries, 99 Miss. 534, 55 So. 354, 1911 Miss. LEXIS 224 (Miss. 1911).

RESEARCH REFERENCES

Am. Jur.

8 Am. Jur. Legal Forms 2d, Executors and Administrators, § 104:55, (letter from attorney to executor or administrator of estate as to duties and liabilities).

§ 91-7-63. Grant of administration.

(1) Letters of administration shall be granted by the chancery court of the county in which the intestate had, at the time of his death, a fixed place of residence; but if the intestate did not have a fixed place of residence, then by the chancery court of the county where the intestate died, or that in which his personal property or some part of it may be. The court shall grant letters of

administration to the relative who may apply, preferring first the husband or wife and then such others as may be next entitled to distribution if not disqualified, selecting amongst those who may stand in equal right the person or persons best calculated to manage the estate; or the court may select a stranger, a trust company organized under the laws of this state, or of a national bank doing business in this state, if the kindred be incompetent. If such person does not apply for administration within thirty (30) days from the death of an intestate, the court may grant administration to a creditor or to any other suitable person.

(2) In addition to the rights and duties of the administrator contained in this chapter, he shall also have those rights, powers and remedies as set forth in Section 91-9-9.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (54); 1857, ch. 60, art. 61; 1871, §§ 1088, 1089; 1880, § 1993; 1892, § 1850; 1906, § 2024; Hemingway's 1917, § 1689; 1930, § 1629; 1942, § 525; Laws, 1928, ch. 83; Laws, 1994, ch. 589, § 4; Laws, 1999, ch. 374, § 2; Laws, 2002, ch. 612 , § 2; Laws, 2008, ch. 452, § 2, eff from and after passage (approved Apr. 8, 2008).

Editor's Notes — Section 91-9-9, referred to in (2), was repealed by Laws of 2014, ch. 421, § 105, effective July 1, 2014. For present similar provisions, see § 91-8-816.

Cross References — Power of chancery clerk to grant letters of administration, see § 9-5-141 et seq.

Payment of federal and state tax refunds due decedent without administration, see § 27-73-9.

Bank acting as administrator, see § 81-5-33.

Appointment of temporary administrator, see § 91-7-53.

Administrator de bonis non, see § 91-7-69.

County administrators, see § 91-7-73 et seq.

Appointment of sheriff as administrator, see § 91-7-83.

Executor in his own wrong, see § 91-7-249.

JUDICIAL DECISIONS

ANALYSIS

1. Construction and application in general.
2. Necessity of administration.
3. Administration on behalf of creditors.

1. Construction and application in general.

Because the evidence indicated that the decedent had not divorced her former husband when she purportedly married the administrator, a chancellor did not abuse his discretion under Miss. Code Ann. § 91-7-63(1) in removing and replacing the administrator. Estate of Wallace v. Mohamed, 55 So. 3d 1057, 2011 Miss. LEXIS 97 (Miss. 2011).

Widower who was replaced as administrator should have remained administrator for his wife's estate; given the statutory order of preference in Miss. Code Ann. § 91-7-63(1), he was preferred to serve over the chancery court clerk because he was the natural father of one of his wife's heirs. Estate of Wallace v. Mohamed, 55 So. 3d 1088, 2010 Miss. App. LEXIS 106 (Miss. Ct. App. 2010), rev'd, 55 So. 3d 1057, 2011 Miss. LEXIS 97 (Miss. 2011).

Widower should have remained administrator for his wife's estate, in keeping with Miss. Code Ann. § 91-7-63(1), because the evidence before the chancery court was wholly inadequate to show that the widower was not the decedent's legal husband at the time of her death. There were no clerks' certificates affirmatively showing that there was no divorce in counties where the decedent and her prior husband had lived. Estate of Wallace v. Mohamed, 55 So. 3d 1088, 2010 Miss. App. LEXIS 106 (Miss. Ct. App. 2010), rev'd, 55 So. 3d 1057, 2011 Miss. LEXIS 97 (Miss. 2011).

Deceased musician's half-sister became executrix de son tort of decedent's unprobated estate by entering agreement, in which she purported to be sister and only surviving heir of decedent, for assignment of decedent's works, photographs, and materials in exchange for share of royalties. Johnson v. Harris (In re Estate of Johnson), 705 So. 2d 819, 1997 Miss. LEXIS 381 (Miss. 1997), cert. denied, Harris v. Johnson, 522 U.S. 1109, 118 S. Ct. 1037, 140 L. Ed. 2d 104, 1998 U.S. LEXIS 888 (U.S. 1998).

Where an administratrix was appointed in a county with no evidence that the decedent resided there, then the estate was transferred to the decedent's county of residence and the estate filed a negligence action against defendants, summary judgment should have been granted to defendants because under Miss. Code Ann. § 91-7-63(1), no legitimate estate ever existed and the appointment of the administratrix was void. Nat'l Heritage Realty, Inc. v. Estate of Boles, 947 So. 2d 238, 2006 Miss. LEXIS 473 (Miss. 2006), overruled in part, Lewis v. Pagel, 233 So. 3d 740, 2017 Miss. LEXIS 221 (Miss. 2017).

Miss. Code Ann. § 91-7-63(1) is jurisdictional in nature. Nat'l Heritage Realty, Inc. v. Estate of Boles, 947 So. 2d 238, 2006 Miss. LEXIS 473 (Miss. 2006), overruled in part, Lewis v. Pagel, 233 So. 3d 740, 2017 Miss. LEXIS 221 (Miss. 2017).

Status as executrix de son tort, in favor of alleged illegitimate child of deceased musician, was assumed when irrevocable power of attorney was accepted from decedent's half-sister after half-sister had assigned all rights to musician's copyrights, as well as by later accepting appointment as personal representative of half-sister's estate. Johnson v. Harris (In re Estate of Johnson), 705 So. 2d 819, 1997 Miss. LEXIS 381 (Miss. 1997), cert. denied, Harris v. Johnson, 522 U.S. 1109, 118 S. Ct. 1037, 140 L. Ed. 2d 104, 1998 U.S. LEXIS 888 (U.S. 1998).

Although the appointment of non-distributee relatives lies within the discretion of the chancery court under § 91-7-63, a non-distributee relative had a legal right to letters of administration under the statute where she was the guardian of the sole minor heir. In re Estate of Moreland, 537 So. 2d 1337, 1989 Miss. LEXIS 2 (Miss. 1989).

The chancery court is given wide discretion in the appointment and revocation of administrators, including the discretionary authority to waive compliance with the 30-day period to apply for administration set forth in § 91-7-63. In re Estate of Moreland, 537 So. 2d 1337, 1989 Miss. LEXIS 2 (Miss. 1989).

Notice to creditors of decedent's estate signed by the then duly appointed and qualified administrator was valid, notwithstanding that he was removed, on motion of decedent's widow, on the same date that notice to the creditors was first published, and a creditor's claim filed some 2 months after expiration of the 90 day period from first publication date was time barred. Estate of Myers v. Myers, 498 So. 2d 376, 1986 Miss. LEXIS 2844 (Miss. 1986).

Widow's failure to qualify as administratrix did not adversely affect the rights of husband's insurer to recover on items covered by a subrogation agreement and the subrogation provisions of policy since the insurer had the right under Code 1972 §§ 91-7-61, 91-7-63, to apply for and receive letters of administration to conduct whatever suits it deemed necessary to enforce its right. Thornton v. Insurance Co. of North America, 287 So. 2d 262, 1973 Miss. LEXIS 1329 (Miss. 1973).

The provision of a state probate code giving a mandatory preference for appointment as administrator of a decedent's estate to a male applicant over a female applicant otherwise equally qualified violates the equal protection clause of the Fourteenth Amendment; giving a mandatory preference to members of either sex over members of the other, merely to accomplish the elimination of a hearing on the merits of the applicants, constitutes an arbitrary legislative choice forbidden by the Fourteenth Amendment. Reed v. Reed, 404 U.S. 71, 92 S. Ct. 251, 30

L. Ed. 2d 225, 1971 U.S. LEXIS 8 (U.S. 1971).

A daughter of a decedent who is his sole heir and distributee, and fully competent, is entitled, as against decedent's guardian, to be appointed administratrix of his estate. Moore v. Roecker, 239 Miss. 606, 124 So. 2d 473, 1960 Miss. LEXIS 329 (Miss. 1960).

Action of attorneys for plaintiff, who had a cause of action arising out of a motor vehicle collision, in actively participating in securing the appointment of another as administrator of decedent's estate in order that the action against the estate might be brought in Simpson County and, thus, draw two other codefendants into the circuit court of that county was not improper, in the absence of a fraudulent agreement between plaintiff's attorneys and the administrator, and the codefendant's motion for a change of venue was properly denied. Great Southern Box Co. v. Barrett, 231 Miss. 101, 94 So. 2d 912, 1957 Miss. LEXIS 494 (Miss. 1957).

A chancellor has large discretion in the selection of the person to be appointed administrator of an estate except in cases made mandatory by the statute. In re Estate of Burnside, 227 Miss. 110, 85 So. 2d 817, 1956 Miss. LEXIS 660 (Miss. 1956).

In a proceeding on a petition for an appointment of an administrator, where a will appointing executors for decedent's estate was set aside, the court did not abuse its discretion in denying an application for appointment as administrator and declining to remove the executors theretofore appointed. In re Estate of Burnside, 227 Miss. 110, 85 So. 2d 817, 1956 Miss. LEXIS 660 (Miss. 1956).

Executor or administrator is regarded as officer of court subject to direction, supervision and control of court until estate is closed and he is finally discharged. Bailey v. Sayle, 206 Miss. 757, 40 So. 2d 618, 1949 Miss. LEXIS 298 (Miss. 1949).

Chancellor has large measure of discretion, within limitations, in appointment and revocation of administration of decedents' estates. Stribling v. Washington, 204 Miss. 529, 37 So. 2d 759, 1948 Miss. LEXIS 386 (Miss. 1948).

The right of husband, wife, or distributees to preference in granting of administration of intestate's estate is legal right, unless incompetent, but matter is within sound discretion of court as to others. Stribling v. Washington, 204 Miss. 529, 37 So. 2d 759, 1948 Miss. LEXIS 386 (Miss. 1948).

Removal of appointed administratrix and appointment of deceased's widow on petition by widow filed more than thirty days after intestate's death is exercise of sound discretion of chancellor and proper when original administratrix was appointed on petition of daughter who withheld from chancellor all information as to widow, stating deceased was survived by three children, and widow knew nothing of proceedings and did not know administration was necessary. Stribling v. Washington, 204 Miss. 529, 37 So. 2d 759, 1948 Miss. LEXIS 386 (Miss. 1948).

Appointment of one other than husband of deceased as administrator within thirty-day period is not void, but appointee is subject to removal on husband's application within thirty days, provided husband is fit person for appointment. Kevey v. Johnson, 167 Miss. 775, 150 So. 532, 1933 Miss. LEXIS 152 (Miss. 1933).

Sister of deceased appointed as administratrix held entitled to have administration expenses fixed as charge on real property inherited by husband who did not apply for appointment as administrator within thirty-day period. Kevey v. Johnson, 167 Miss. 775, 150 So. 532, 1933 Miss. LEXIS 152 (Miss. 1933).

2. Necessity of administration.

Heirs suing for debt to decedent must allege and prove no necessity of local administration. Richardson v. Neblett, 122 Miss. 723, 84 So. 695, 1920 Miss. LEXIS 472 (Miss. 1920).

Foreign administrator has no interest in personalty situated in Mississippi. Richardson v. Neblett, 122 Miss. 723, 84 So. 695, 1920 Miss. LEXIS 472 (Miss. 1920).

Where insurance policy was expressly payable to daughter of deceased alone, administrator to collect policy not necessary. Young v. Roach, 105 Miss. 6, 61 So. 984, 1913 Miss. LEXIS 184 (Miss. 1913).

3. Administration on behalf of creditors.

Where a nonresident and a resident were killed in an automobile collision in Mississippi allegedly as the result of the nonresident's negligence, the heirs of the deceased resident had a cause of action against the personal representative of the deceased nonresident under the wrongful death statute Code 1942, § 1453, and were creditors of the nonresident's estate, and upon their petition the chancery court of the county where the nonresident's death occurred had jurisdiction to grant administration upon the estate of the nonresident. Day v. Hart, 232 Miss. 516, 99 So. 2d 656, 1958 Miss. LEXIS 301 (Miss. 1958).

Provision of this section [Code 1942, § 525] that if such persons as are preferred do not apply for administration within thirty days from death of intestate court may grant administration to creditor or other person is primarily for benefit of creditors, and only secondarily for benefit of persons inferior in priority to right to administer. Stribling v. Washington, 204 Miss. 529, 37 So. 2d 759, 1948 Miss. LEXIS 386 (Miss. 1948).

Recalcitrant heirs will not be permitted to hamper creditors to prejudice of creditors' rights against an estate by failure promptly to institute administration thereof. Stribling v. Washington, 204 Miss. 529, 37 So. 2d 759, 1948 Miss. LEXIS 386 (Miss. 1948).

Creditors of decedent have first claim against his estate, and it is paramount duty of administrator to protect their interest. Stribling v. Washington, 204 Miss. 529, 37 So. 2d 759, 1948 Miss. LEXIS 386 (Miss. 1948).

The receiver of an alleged creditor of a decedent could not request appointment of administrator for decedent's estate, unless it appeared that decedent died owing debt to alleged creditor. Thompson v. Carter's Estate, 180 Miss. 104, 177 So. 356, 1937 Miss. LEXIS 117 (Miss. 1937).

The possession and ownership of a decedent's note on which there was a balance due disclosed, prima facie, such a debt as entitled receiver of alleged creditor of decedent to request appointment of administrator for decedent's estate. Thompson v. Carter's Estate, 180 Miss. 104, 177 So. 356, 1937 Miss. LEXIS 117 (Miss. 1937).

A decedent's heirs could not set up that amount of bank deposit due decedent exceeded amount of note held by receiver of bank, to prevent appointment of administrator for decedent's estate on application of receiver, but such issue could only be raised in course of administration, or in suit on note against administrator. Thompson v. Carter's Estate, 180 Miss. 104, 177 So. 356, 1937 Miss. LEXIS 117 (Miss. 1937).

RESEARCH REFERENCES

ALR.

Right of surviving spouse, personally incompetent to serve as administrator because of being younger than age specified, to nominate administrator. 64 A.L.R.2d 1152.

Propriety of court's appointment, as administrator of decedent's estate, of stranger rather than person having statutory preference. 84 A.L.R.3d 707.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 158 et seq.

8 Am. Jur. Legal Forms 2d (Rev), Executors and Administrators § 104:9 et seq. (appointment, qualification, and tenure).

CJS.

33 C.J.S., Executors and Administrators § 39 et seq.

§ 91-7-65. Persons disqualified to administer.

Letters of administration shall not be granted to a person under the age of eighteen (18) years, of unsound mind, or convicted of any felony.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (60); 1857, ch. 60, art. 62;

1871, § 1090; 1880, § 1994; 1892, § 1851; 1906, § 2025; Hemingway's 1917, § 1690; 1930, § 1630; 1942, § 526; Laws, 1976, ch. 375, eff from and after July 1, 1976.

Cross References — Grant of letters testamentary to person under twenty-one, see § 91-7-35.

JUDICIAL DECISIONS

1. In general.

An infant can neither be an administrator nor dictate who shall be appointed. Rea v. Englesing, 56 Miss. 463, 1879 Miss. LEXIS 145 (Miss. 1879).

RESEARCH REFERENCES

ALR.

Construction and effect of statutory provision that no person is competent to act as executor or administrator whom court finds incompetent by reason of want of integrity. 73 A.L.R.2d 458.

Adverse interest or position as disqualification for appointment of administrator, executor, or other personal representative. 11 A.L.R.4th 638.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators §§ 198, 199.

CJS.

33 C.J.S., Executors and Administrators §§ 54-59.

§ 91-7-67. Oath and bond of administrator.

The person to whom administration is granted, at or prior to the granting thereof, shall take and prescribe the following oath:

> "I do swear that ________, deceased, died without any will, as far as I know or believe, and that I, if and when appointed, will well and truly administer all the goods, chattels, and credits of the deceased, and pay his debts as far as his goods, chattels, and credits will extend and the law requires me, and that I will make a true and perfect inventory of the said goods, chattels, and credits, and a just account, when thereto required. So help me God."

He shall give bond in a penalty equal to the value of all the personal estate, with such sureties as may be approved by the court or clerk, payable to the state, with condition in form or to the effect following, to wit:

> "The condition of this bond is, that if the above bound ________, as administrator of the goods, chattels, rights, and credits of ________, deceased, shall faithfully discharge all the duties required of him by law, then this obligation shall be void."

The chancellor, in termtime or in vacation, may waive or reduce the bond if the administrator is the decedent's sole heir or if all the heirs are competent and present their sworn petition to waive or reduce such bond.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (56); 1857, ch. 60, art. 63; 1871, § 1118; 1880, § 1995; 1892, § 1852; 1906, § 2026; Hemingway's 1917, § 1691; 1930, § 1631; 1942, § 527; Laws, 1975, ch. 462; Laws, 2001, ch. 422, § 3, eff from and after July 1, 2001.

Cross References — Oath and bond of executor or administrator with will annexed, see § 91-7-41.

Bond and oath of county administrator, see § 91-7-75.

Recording of bond, see § 91-7-311.

New bonds for executors and administrators, see §§ 91-7-315, 91-7-317.

Credit for cost of bond, see § 91-7-319.

Additional provisions governing the conduct of executors, administrators, and other fiduciaries, see Miss. Uniform Chancery Court Rules 6.01 et seq.

JUDICIAL DECISIONS

1. In general.

That an administrator wrote designing and misleading letters intending to prevent, and which did prevent, a creditor from probating his claim, whereby it was lost, is not a breach of his bond. Nagle v. Ball, 71 Miss. 330, 13 So. 929, 1893 Miss. LEXIS 150 (Miss. 1893).

RESEARCH REFERENCES

ALR.

What funds, not part of the estate, are received under color of office so as to render liable surety on executor's or administrator's bond. 82 A.L.R.3d 869.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators §§ 261, 312, 313, 321, 322.

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 311 et seq. (administration bonds).

CJS.

33 C.J.S., Executors and Administrators §§ 89-99.

§ 91-7-68. Administrator of estate of intestate under legal disability.

Upon the death intestate of any person under legal disability for whom a guardian, conservator or other fiduciary has been appointed by a court of competent jurisdiction and is serving, the judge or clerk of such court, upon proof of death of such person, may issue letters of administration to the already acting fiduciary, unless some relative or other person entitled to administer the estate shall within thirty days after the death of such person apply to the court for such administration. Upon the issuance of letters of administration to the already acting fiduciary, such fiduciary shall thereupon publish notice to creditors and administer the decedent's estate in the manner required by law. Such fiduciary's bond shall continue in force and he shall make only one (1) final account, unless the court, on the motion of any interested party or its own motion, shall require additional bond or accounting.

HISTORY: Codes, 1942, § 525.5; Laws, 1972, ch. 386, § 1, eff from and after passage (approved April 26, 1972).

JUDICIAL DECISIONS

1. In general.

The guardian of a life tenant did not automatically become the administrator of the life tenant's estate on her death pursuant to § 91-7-68, and thus she was not the proper party to prosecute an action to recover damages for personal injury, emotional distress, and reduction in value of the life estate following the life tenant's death, since there is no administrator of the estate of a deceased person until one is qualified and appointed by the court. Madison v. Vintage Petroleum, 872 F. Supp. 340, 1994 U.S. Dist. LEXIS 18918 (S.D. Miss. 1994), aff'd, 87 F.3d 1311, 1996 U.S. App. LEXIS 16949 (5th Cir. Miss. 1996), dismissed, 85 F.3d 625, 1996 U.S. App. LEXIS 12907 (5th Cir. Miss. 1996).

RESEARCH REFERENCES

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 14.

CJS.

33 C.J.S., Executors and Administrators § 12.

§ 91-7-69. Administration de bonis non.

If an executor or administrator die, resign, be removed, or become incompetent, letters of administration de bonis non with the will annexed, or de bonis non, shall be granted to the person entitled, and he shall proceed in the administration of the estate. The letters, bond, and oath shall be in the common form, substituting proper words to show the character of the administration. The executor of an executor shall not be entitled, in right of his office, to administration de bonis non of the first estate; but such executor, or the administrator of an executor, or the executor or administrator of an administrator shall settle the accounts of his testator or intestate in the administration of the first estate, and for that purpose shall be amenable to the jurisdiction of the court.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (59); 1857, ch. 60, art. 65; 1871, § 1120; 1880, § 1997; 1892, § 1856; 1906, § 2031; Hemingway's 1917, § 1696; 1930, § 1632; 1942, § 528.

Cross References — Chancery clerk's power to grant letters of administration de bonis non, see § 9-5-141 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Powers and duties of administrator de bonis non.
3. Powers and duties of administrator of administrator.

1. In general.

Where administrator after final account and approval misappropriated money and absconded, distributees could sue on bond without administrator de bonis non. Davis v. State, 118 Miss. 577, 79 So. 764, 1918 Miss. LEXIS 98 (Miss. 1918).

It is not necessary to give notice to the legatees or wait until final settlement by the executor in order to appoint an administrator de bonis non cum testamento annexo. Sivley v. Summers, 57 Miss. 712, 1880 Miss. LEXIS 44 (Miss. 1880).

2. Powers and duties of administrator de bonis non.

Although administratrix de bonis non is only liable for unadministered assets of estate coming into her hands, she must file final account and have it approved. Hayes v. Holman, 165 Miss. 494, 144 So. 690, 1932 Miss. LEXIS 291 (Miss. 1932).

Administrator de bonis non entitled to amend so as to sue for value of property sold defendant where note given was excluded because payable to original administrator individually. Barnes v. Barnes, 109 Miss. 273, 68 So. 248, 1915 Miss. LEXIS 146 (Miss. 1915).

3. Powers and duties of administrator of administrator.

Where administrator of deceased administrator did not file account required and evidence showed money was paid out by deceased administrator without showing purposes, estate of deceased administrator and his bondsmen were liable to heirs and distributees, payment to be enforced out of original property of administrator if legally possible and in default thereof, out of bondsmen of deceased administrator. Hayes v. National Surety Co., 169 Miss. 676, 153 So. 515, 1934 Miss. LEXIS 67 (Miss. 1934).

Bondsmen of deceased administrator's administrator, who failed to file account required by statute, were liable to distributees of first estate for all consequences of failure of principal as administrator to faithfully discharge duties required. Hayes v. National Surety Co., 169 Miss. 676, 153 So. 515, 1934 Miss. LEXIS 67 (Miss. 1934).

Where administrator of administrator did not file account as required, distributees of first estate could recover against bondsmen of administrator of administrator though demand was not probated, since demand was a liability, not a claim. Hayes v. National Surety Co., 169 Miss. 676, 153 So. 515, 1934 Miss. LEXIS 67 (Miss. 1934).

Until account by administrator of administrator has been approved, administrator of administrator must hold in his hands sufficient assets of estate of his decedent to pay balance due to first estate, whether such assets are derivative of first estate, or whether original property of deceased administrator. Hayes v. National Surety Co., 169 Miss. 676, 153 So. 515, 1934 Miss. LEXIS 67 (Miss. 1934).

Account by administrator of administrator must be filed with reasonable promptness. Hayes v. National Surety Co., 169 Miss. 676, 153 So. 515, 1934 Miss. LEXIS 67 (Miss. 1934).

Courts have no authority to excuse performance of duty of administrator of administrator to settle accounts of deceased administrator, regardless of circumstances. Hayes v. National Surety Co., 169 Miss. 676, 153 So. 515, 1934 Miss. LEXIS 67 (Miss. 1934).

In filing of account by administrator of administrator, the same requirements, including those in matter of notice to all proper parties in interest, must be observed which appertain to final accounts. Hayes v. National Surety Co., 169 Miss. 676, 153 So. 515, 1934 Miss. LEXIS 67 (Miss. 1934).

RESEARCH REFERENCES

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 1014 et seq.

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 1161 et seq. (administration de bonis non); Forms 1271 et seq. (administration de bonis non with will annexed).

CJS.

34 C.J.S., Executors and Administrators § 1129 et seq.

§ 91-7-71. Rights of administrator de bonis non.

Every administrator de bonis non shall be entitled to all choses in action taken or held by any former executor or administrator, and may institute suit therefor and, if necessary, enjoin the former executor or administrator from collecting the same. He may sue on the bond of any former executor or administrator of the estate, where the estate is insolvent or where suit and recovery may be necessary for the payment of the debts of the estate, for any money due by the former executor or administrator and which should have been accounted for and paid over by him. Where it shall be necessary for the payment of debts of the estate, an administrator de bonis non may except to the final account of a former executor or administrator, or surcharge and falsify an annual or partial settlement of such former executor or administrator, or file and maintain a bill to review any order or decree of the court allowing the account of such executor or administrator, in the same manner that distributees or legatees may do. The court or chancellor may require of an administrator de bonis non an additional bond to cover the money sought to be recovered by any such proceedings.

HISTORY: Codes, 1857, ch. 60, art. 135; 1871, § 1193; 1880, § 1998; 1892, § 1857; 1906, § 2032; Hemingway's 1917, § 1697; 1930, § 1633; 1942, § 529.

Cross References — Additional provisions governing the conduct of executors, administrators, and other fiduciaries, see Miss. Uniform Chancery Court Rules 6.01 et seq.

JUDICIAL DECISIONS

1. In general.

Administrator's right to recover funds wrongfully paid to deceased's sisters and to guardian of deceased's illegitimate child passed to administratrix de bonis non upon her appointment, and it was her right and duty to recover such funds. National Surety Corp. v. Laughlin, 178 Miss. 499, 172 So. 490, 1937 Miss. LEXIS 187 (Miss. 1937).

While, under statute, administrator de bonis non is entitled to all choses in action taken or held by former administrator, and can maintain suit therefor, he can sue on bond of former administrator only in case estate is insolvent or where suit and recovery may be necessary for payment of debts of estate. National Surety Corp. v. Laughlin, 178 Miss. 499, 172 So. 490, 1937 Miss. LEXIS 187 (Miss. 1937).

Under statute, administrator de bonis non could not sue on bond of former administrator de bonis non, in absence of allegation that estate was insolvent or that recovery was necessary for payment of debts. National Surety Corp. v. Laughlin, 178 Miss. 499, 172 So. 490, 1937 Miss. LEXIS 187 (Miss. 1937).

The right of the administrator de bonis non to sue on the bond will be lost if the debts against the estate become barred or be paid, but the right survives to the distributees. Weir v. Monahan, 67 Miss. 434, 7 So. 291, 1889 Miss. LEXIS 66 (Miss. 1889).

RESEARCH REFERENCES

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 1029 et seq.

8 Am. Jur. Legal Forms 2d, Executors and Administrators § 104:55 (letter from attorney to executor or administrator of estate as to duties and liabilities).

§ 91-7-73. County administrator.

It shall be the duty of the chancellor to appoint for each county of his district an officer to be styled "county administrator," to hold his office four years, and whose appointment shall be entered on the minutes of the court.

HISTORY: Codes, 1871, § 1091; 1880, § 1999; 1892, § 1846; 1906, § 2020; Hemingway's 1917, § 1685; 1930, § 1634; 1942, § 530.

§ 91-7-75. Bond and oath of county administrator.

Before a county administrator shall perform any of the duties or functions of the office, and before any letters shall be granted to him, he shall execute and file in the office of the clerk of the chancery court a bond with two (2) or more sufficient sureties, to be approved by the chancellor in termtime or vacation, in a penalty of Five Thousand Dollars ($5,000.00) payable to the state, conditioned that he will discharge all the duties of the office of county administrator, which bond may be sued on at the instance of any person interested. He shall also take an oath at or prior to the granting of letters of administration, to be filed in the clerk's office, to administer according to law every estate which may be committed to his charge, and that he will account for and pay over all monies in his hands by virtue of his office when thereto required by order of the court.

HISTORY: Codes, 1871, § 1093; 1880, § 2001; 1892, § 1847; 1906, § 2021; Hemingway's 1917, § 1686; 1930, § 1635; 1942, § 531; Laws, 2001, ch. 422, § 4, eff from and after July 1, 2001.

Cross References — Oath and bond of executor or administrator with will annexed, see § 91-7-41.

Oath and bond of administrator, see § 91-7-67.

Recording of bonds, see § 91-7-311.

New bonds of executors and administrators, see §§ 91-7-315, 91-7-317.

Additional provisions governing the conduct of executors, administrators, and other fiduciaries, see Miss. Uniform Chancery Court Rules 6.01 et seq.

§ 91-7-77. Additional bond may be required.

Whenever it shall appear that the penalty of the bond of the county administrator, as fixed, is not sufficient in amount to secure a faithful discharge of the duties of the office, it shall be the duty of the court or the chancellor, or the clerk in vacation, after five days' notice given, to require him to give an additional bond in such penalty as the chancellor or clerk may deem sufficient to secure the rights of all parties interested; and on noncompliance, he may be removed from office.

HISTORY: Codes, 1871, § 1095; 1880, § 2002; 1892, § 1848; 1906, § 2022; Hemingway's 1917, § 1687; 1930, § 1636; 1942, § 532.

RESEARCH REFERENCES

ALR.

What funds, not part of the estate, are received under color of office so as to render liable surety on executor's or administrator's bond. 82 A.L.R.3d 869.

§ 91-7-79. Letters granted to county administrator.

When it shall appear that any person has died, in this state or out of it, and has left real or personal property in this state, and some person has not applied for letters testamentary or of administration, the administration of the estate, after the expiration of sixty days from the death of such person, shall be committed to the county administrator, to whom letters of administration, administrator de bonis non, administration with the will annexed, or as the case may require, shall be granted. He shall administer the estate, as in other cases, under the direction of the court, with the same rights and liabilities as executors and other administrators. The county administrator shall not be bound to incur or be liable for costs, except such as the estate in his hands, in excess of his commissions shall be sufficient to pay. On the final settlement of the estate, he shall be allowed by the court, as his commissions, a sum not to exceed ten percent (10%) on the whole estate administered. The county administrator may also be appointed temporary administrator pending an appeal from the grant of letters testamentary or of administration, and administrator to institute suit in proper cases. He shall be liable in all cases on his official bond for his acts, and another bond need not be executed by him in any case unless, his official bond being insufficient, the court shall require an additional bond, or where he may be required to give bond to account for the proceeds of a sale of land.

HISTORY: Codes, 1871, § 1092; 1880, §§ 2004, 2005; 1892, § 1858; 1906, § 2033; Hemingway's 1917, § 1698; 1930, § 1637; 1942, § 533.

Cross References — Powers of chancery clerk generally, see § 9-5-141 et seq.
County administrator acting as escheator, see § 89-11-3.

RESEARCH REFERENCES

ALR.
Powers and duties of public administrator. 56 A.L.R.2d 1183.

Am. Jur.
31 Am. Jur. 2d, Executors and Administrators § 1095 et seq.

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 1321 et seq. (public administrators).

CJS.
34 C.J.S., Executors and Administrators § 1195 et seq.

§ 91-7-81. Accounts to be filed when office vacated.

Should the county administrator resign his office or otherwise vacate it, he shall forthwith file an account of his administration in each case. Should such officer die, settlements of all estates committed to him shall be made by his executor or administrator.

HISTORY: Codes, 1871, § 1094; 1880, § 2006; 1892, § 1849; 1906, § 2023; Hemingway's 1917, § 1688; 1930, § 1638; 1942, § 534.

Cross References — Accounts generally, see § 91-7-277.
Contents of final accounts, see § 91-7-291.

Requirement that account filed by administrator must be personally signed and sworn to by him, see Miss. Uniform Chancery Court Rule 6.14.

§ 91-7-83. Sheriff administrator in certain cases.

If it appears that any person has died, in this state or out of it, and has left property, and some person will not qualify as executor or administrator, the court, or clerk in vacation, shall appoint the sheriff to be administrator, who shall administer the estate. The sheriff shall not be bound to incur any cost except out of the estate, and he shall be allowed not more than ten percent (10%) on the amount thereof. Any sheriff who may be appointed administrator shall make settlement of his administration, if he hath not done so before, at the termination of his office and deliver whatever property he may have of the estate at the time to his successor in office, or to such other person as may be appointed administrator. His official bond as sheriff shall be security for his faithful administration of such estate, and he shall not be required to execute any other bond, except to account for the proceeds of a sale of land.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 19 (1); 1857, ch. 60, art. 68; 1871, § 1092; 1880, § 2007; 1892, § 1859; 1906, § 2034; Hemingway's 1917, § 1699; 1930, § 1639; 1942, § 535.

Cross References — Sheriffs generally, see § 19-25-1 et seq.

Delivery of property levied on by sheriff to successor, see § 19-25-57.

JUDICIAL DECISIONS

1. In general.

Appointment of the sheriff as administrator d.b.n. under this section [Code 1942, § 535], at instance of nonresident creditors, may properly be denied where local administration has been completed. Stargell v. White, 234 Miss. 601, 107 So. 2d 125, 1958 Miss. LEXIS 532 (Miss. 1958).

The power of the sheriff to act as administrator ceases with his term of office, and a suit by him may be revived in the name of his successor, although he be still amenable to account for his acts as administrator. Cox v. Martin, 75 Miss. 229, 21 So. 611, 1897 Miss. LEXIS 82 (Miss. 1897).

§ 91-7-85. Removal and surrender of trust.

Every executor or administrator may be removed if he become disqualified, or for improper conduct in office, at the instance of any person interested, on five days' notice to such executor or administrator; or may surrender the trust, and thereupon shall give the proper notice to the distributees or legatees and settle with the court. In case of removal or resignation, administration shall be granted as in case of the death of the executor or administrator, and with like effect. An executor or administrator who may be removed, or who may surrender his trust, shall continue to be answerable to the court until his final settlement and satisfaction be made, and until that time shall be liable on his bond.

HISTORY: Codes, 1857, ch. 60, art. 67; 1871, § 1122; 1880, § 2008; 1892, § 1860; 1906, § 2035; Hemingway's 1917, § 1700; 1930, § 1640; 1942, § 536.

Cross References — Removal of county administrator for failure to provide additional bond, see § 91-7-77.

Removal for failure to return inventory, see § 91-7-105.

Suits by or against administrator, see § 91-7-241.

Removal for failure to account, see §§ 91-7-277, 91-7-283.

Hearing on removal proceedings, see § 91-7-289.

Removal for failure to furnish new bond when required, see §§ 91-7-315, 91-7-317.

JUDICIAL DECISIONS

1. In general.

Executor's misrepresentation of the true facts to the chancery court (his brother's known claims of ownership to the livestock and the evidence of a valid inter vivos gift by the decedent), amounted to "improper conduct" under Miss. Code Ann. § 91-7-85, and his removal as executor of the estate was proper. Further, the chancellor properly found that the executor (and his attorney), violated the Mississippi Litigation Accountability Act, Miss. Code Ann. §§ 11-55-1 through 11-55-15 (Rev. 2002), and Miss. R. Civ. P. 11(b), by their misrepresentations in obtaining an order from the chancery court, permitting them to retrieve the subject livestock, and the chancellor's award of attorney's fees and expenses was proper. In re Estate of Ladner v. Ladner, 909 So. 2d 1051, 2004 Miss. LEXIS 1356 (Miss. 2004) (Miss. – 2004).

Chancellor's removal of executrix of decedent's estate was amply supported by record showing that she had paid unprobated claims, had failed to timely file estate tax returns, and had paid attorney's fees without court approval, as well as conflicts of interest in the matter of administering the estate. Harper v. Harper, 491 So. 2d 189, 1986 Miss. LEXIS 2508 (Miss. 1986).

Since the chancellor had the power to appoint a temporary administrator, it followed that if an executor had qualified, such executor must be removed during the pendency of the will contest in order to permit the temporary administrator to perform his duties pending the outcome of the contest, but since the petition for appointment of the temporary administrator was not brought under this section [Code 1942, § 536], if the will is upheld, appellant would be entitled to resume the office of executor, unless and until he is removed permanently under appropriate proceedings. Sandifer v. Sandifer, 237 Miss. 464, 115 So. 2d 46, 1959 Miss. LEXIS 491 (Miss. 1959).

Supreme court will not interfere with action of chancery court in removing trustee on its own motion, unless palpably unjust. Nutt v. State, 96 Miss. 473, 51 So. 401, 1910 Miss. LEXIS 171 (Miss. 1910).

RESEARCH REFERENCES

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators §§ 275, 279, 280.

9A Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 261 et seq. (termination of authority); Forms 301 et seq. (removal).

8 Am. Jur. Legal Forms 2d, Executors and Administrators, § 104:42 et seq. (renunciation and resignation).

CJS.

33 C.J.S., Executors and Administrators §§ 139, 140 et seq.

§ 91-7-87. Administration revoked by proof of will and grant of letters testamentary.

If a will shall be found and probated and letters testamentary be granted thereon, the same shall be a revocation of the administration; but acts lawfully done by the administrator without actual notice of such revocation shall be valid and binding.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (55); 1857, ch. 60, art. 64; 1871, § 1119; 1880, § 1996; 1892, § 1853; 1906, § 2027; Hemingway's 1917, § 1692; 1930, § 1641; 1942, § 537.

JUDICIAL DECISIONS

1. In general.

Where an instrument was considered to be a deed and there was a grant of intestate administration, this was not res judicata on the issue whether testator died leaving a will, and the grant of testator administration is not a bar to the subsequent probate of a will. White v. Inman, 212 Miss. 237, 54 So. 2d 375, 1951 Miss. LEXIS 447 (Miss. 1951).

Chancery court has power under Code 1942, § 520, to continue widow of deceased testator as administratrix for purpose of sale of land to pay debts in absence of sufficient personalty therefor, and failure of the court, after the existence of the will became known, to change the letters of administration granted to widow and sole heir at law to letters as temporary administratrix pending a will contest, did not render the action of the court absolutely void in ordering the land sold by her, but only voidable at most, since the court had constitutional jurisdiction of the subject-matter and jurisdiction of all the parties in interest. Gill v. Johnson, 206 Miss. 707, 40 So. 2d 600, 1949 Miss. LEXIS 295 (Miss. 1949).

Where testimony was sufficient to have will probated in solemn form, chancery court had authority to admit will to probate, grant letters testamentary to executor named therein, and set aside appointment of administratrix theretofore made under statute providing that if a will shall be found and probated, and letters testamentary granted thereon, the same shall be a revocation of administration. Austin v. Patrick, 179 Miss. 718, 176 So. 714, 1937 Miss. LEXIS 74 (Miss. 1937).

RESEARCH REFERENCES

ALR.

Statutes dealing with existing intestate administration, upon discovery of will. 65 A.L.R.2d 1201.

Right to probate subsequently discovered will as affected by completed prior proceedings in intestate administration. 2 A.L.R.4th 1315.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators, §§ 275, 279, 280.

9A Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Form 273 (petition or application to revoke letters of administration and for probate of will and issuance of letters testamentary).

CJS.

33 C.J.S., Executors and Administrators § 139, 140.

§ 91-7-89. Letters of certain nonresidents revoked.

If letters testamentary or of administration be granted to any person not a resident of the state, or if any executor or administrator after his appointment remove out of the state, and if such executor or administrator refuse or neglect to settle his accounts annually or neglect the due administration thereof in any other respect, the court, after publication made and proof thereof as in other cases, or personal notice, may revoke the letters of such executor or administrator and proceed to grant administration de bonis non as if such executor or administrator had died or resigned.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 21 (7); 1857, ch. 60, art. 130; 1871, § 1188; 1880, § 2009; 1892, § 1861; 1906, § 2036; Hemingway's 1917, § 1701; 1930, § 1642; 1942, § 538.

§ 91-7-90. Order of abatement for shares of distributees of deceased's property.

(1) Except as provided in subsection (2) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order: (a) property not disposed of by the will; (b) residuary bequests and devises; (c) general bequests and devises; (d) specific bequests and devises. For purposes of abatement, a general bequest or devise charged on any specific property or fund is a specific bequest or devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general bequest or devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received, if full distribution of the property had been made in accordance with the terms of the will.

(2) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (1), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(3) If the subject of a preferred bequest or devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

HISTORY: Laws, 2019, ch. 458, § 11, eff from and after July 1, 2019.

§ 91-7-91. Assets defined; unsecured creditors to give notice.

The real property, goods, chattels, personal property, choses in action and money of the deceased, or which may have accrued to his estate after his death from the sale of property, real, personal or otherwise, and the rent of lands accruing during the year of his death, whether he died testate or intestate, shall be assets and shall stand chargeable with all the just debts, funeral expenses of the deceased, and the expenses of settling the estate, without any preference or priority as between real and personal property, and shall abate in the manner set out in Section 91-7-90. However, in cases where no administration has been or shall be commenced on the estate of the decedent within three (3) years after his death, no creditor of the decedent shall be entitled to a lien or any claim whatsoever on any real property of the decedent, or the proceeds therefrom, against purchasers or encumbrancers for value of the heirs of the decedent unless such creditor shall, within three (3) years and ninety (90) days from the date of the death of the decedent, file on the lis pendens docket in the office of the clerk of the chancery court of the county in which the land is located notice of his claim, containing the name of the decedent, a brief statement of the nature, amount and maturity date of his claim and a description of the real property sought to be charged with the claim. The provisions of this section requiring the filing of notice shall not apply to any secured creditor having a recorded lien on the property.

HISTORY: Codes, 1857, ch. 60, art. 80; 1871, § 1134; 1880, § 2025; 1892, § 1881; 1906, § 2056; Hemingway's 1917, § 1721; 1930, § 1643; 1942, § 539; Laws, 1938, ch. 262; Laws, 1975, ch. 373, § 3, eff from and after January 1, 1976; Laws, 2019, ch. 458, § 12, eff from and after July 1, 2019.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error near the beginning of the second sentence by deleting the word “that” following “However.” The Joint Committee ratified the correction at its August 12, 2019, meeting.

Cross References — Payment to heirs of money in savings association account without administration, see § 81-12-143.

Rent as asset, see § 89-7-11.

Liability of exempt property for debts of decedent, see § 91-1-21 et seq.

Summary proceeding to discover assets, see § 91-7-103.

Receipt of property in compromise of claim, see § 91-7-229.

Use of assets by fiduciary, see § 91-7-253.

JUDICIAL DECISIONS

ANALYSIS

1. Construction and application in general.
2. Rents or other income as assets.
3. Particular claims or charges as debts.
4. Intent of testator.

1. Construction and application in general.

When executor bank obtains Mississippi court decision under § 91-7-91 requiring that federal estate taxes, debts and expenses of estate be paid out of personalty of estate, starting with residuum, and bank subsequently obtains conflicting court decision in another state requiring that tax liability of estate be apportioned equally among all estate beneficiaries, whether of real or personal property, pro rata, federal court in which bank files interpleader action will give full faith and credit and preclusive effect to latter state court decision. First Tennessee Bank N.A. v. Smith, 766 F.2d 255, 1985 U.S. App. LEXIS 20109 (6th Cir. Tenn. 1985).

In the absence of a direction to the contrary by the testator, estate taxes must be paid first from personal property not specifically devised by will, secondly from other personalty of the estate, and thirdly, if necessary, from the real estate. Stovall v. Stovall, 360 So. 2d 679, 1978 Miss. LEXIS 2295 (Miss. 1978).

Having properly assumed jurisdiction of the will of a non-resident testatrix, the Mississippi court was not required by comity to defer to the courts of the domiciliary state on the issue of which of the parties should bear the burden of the estate taxes and other debts of the estate.

Crum v. First Nat'l Bank, 321 So. 2d 287 (Miss. 1975).

Property held by a decedent as trustee is no part of the assets of his estate, but his personal representative becomes trustee ex officio. Holliman v. Demoville, 243 Miss. 542, 138 So. 2d 734, 1962 Miss. LEXIS 373 (Miss. 1962).

Administration of decedent's estate covers only personal property belonging to estate and real property is not involved unless and until personal property becomes insufficient to pay debts and it becomes necessary to resort to land for payment of debts of estate. Barnes v. Rogers, 206 Miss. 887, 41 So. 2d 58, 1949 Miss. LEXIS 311 (Miss. 1949).

The term "assets," as applied to decedent's estate and as used in this section [Code 1942, § 539], means property which is available, if necessary, for the payment of debts and expenses. Gaines v. Klein, 203 Miss. 271, 34 So. 2d 489, 1948 Miss. LEXIS 262 (Miss. 1948).

Upon death of owner, personalty descends to personal representative for payment of debts and legacies, and realty goes to heirs and devisees. Gidden v. Gidden, 176 Miss. 98, 167 So. 785, 1936 Miss. LEXIS 116 (Miss. 1936).

Realty goes to heirs and devisees and is not subject to debts until personalty is exhausted, unless will expressly provides otherwise. Gidden v. Gidden, 176 Miss. 98, 167 So. 785, 1936 Miss. LEXIS 116 (Miss. 1936).

Lien of creditors of decedent under statute held charge only on right, title, and interest of deceased in land at date of death. Blum v. Planters' Bank & Trust Co., 161 Miss. 226, 135 So. 353, 1931 Miss. LEXIS 257 (Miss. 1931).

Lien of creditors on lands of decedent is not superior to rights acquired by third parties in such land before death of decedent. Blum v. Planters' Bank & Trust Co., 161 Miss. 226, 135 So. 353, 1931 Miss. LEXIS 257 (Miss. 1931).

Bank becoming creditor before lands were conveyed to decedent acquired no right to subject land to payment of debts superior to outstanding liens thereon or equities therein, recorded or unrecorded, existing at grantee's death. Blum v. Planters' Bank & Trust Co., 161 Miss. 226, 135 So. 353, 1931 Miss. LEXIS 257 (Miss. 1931).

Bequest of personalty not theretofore specifically willed was residuum and chargeable with payment of debts to exoneration of real estate. Anderson v. Gift, 156 Miss. 736, 126 So. 656, 1930 Miss. LEXIS 213 (Miss. 1930).

On accounting administrator is liable for actual value of property coming into his hands, not value fixed by appraisers. Davis v. Blumenberg, 107 Miss. 432, 65 So. 503, 1914 Miss. LEXIS 102 (Miss. 1914).

Under this section [Code 1942, § 539] and Code 1942, § 588 the personal estate must be exhausted before the lands may be resorted to for the payment of debts, unless a contrary intent be manifested in the will of the decedent. Gordon v. James, 86 Miss. 719, 39 So. 18, 1905 Miss. LEXIS 93 (Miss. 1905).

An administrator, by consent of the heirs, may lease out decedent's lands for the purpose of paying his debts. Ashley v. Young, 79 Miss. 129, 29 So. 822, 1901 Miss. LEXIS 16 (Miss. 1901).

2. Rents or other income as assets.

This section [Code 1942, § 539] simply makes rents liable for the debts and expenses of administration if needed for that purpose; if rents are collected from property specifically devised, they are the property of the devisee and not liable for such debts and expenses until the residuum of the estate has been exhausted. Gaines v. Klein, 203 Miss. 271, 34 So. 2d 489, 1948 Miss. LEXIS 262 (Miss. 1948).

Where testatrix in devise of real estate provided for possession thereof in the devisee immediately upon probate of her will if she should die before the month of April in any year thereafter, and she died prior to April, the rents accruing from such realty during the year of her death did not become part of her personal estate so as to be chargeable for her debts, this section [Code 1942, § 539] being inapplicable under such circumstances. Eatherly v. Winn, 185 Miss. 742, 189 So. 99, 1939 Miss. LEXIS 184 (Miss. 1939).

Where a testatrix provided for the payment of all her just and legal debts, taxes on real estate accruing and due for the year prior to her death were to be paid by her executors and were not chargeable against the devisee of such real estate devised to him subject to one-half of the mortgage debt thereon. Eatherly v. Winn, 185 Miss. 742, 189 So. 99, 1939 Miss. LEXIS 184 (Miss. 1939).

Where will did not confer authority, neither executor nor administrator with the will annexed had authority to collect rents on realty except during year of testator's death. Fidelity & Deposit Co. v. Doughtry, 181 Miss. 586, 179 So. 846, 1938 Miss. LEXIS 99 (Miss. 1938).

Rent accruing on decedent's realty during year of decedent's death held asset in administrator's hands. Wright v. Wright, 160 Miss. 235, 134 So. 197, 1931 Miss. LEXIS 202 (Miss. 1931).

Rent accruing on land in Mississippi is a debt governed by its laws. Richardson v. Neblett, 122 Miss. 723, 84 So. 695, 1920 Miss. LEXIS 472 (Miss. 1920).

Under this section [Code 1942, § 539] and Code 1942, § 577 rents accruing during the year of decedent's death, and crops remaining on the lands at the date of his death, whether gathered or still in the field, and whether they are matured or not, are assets of decedent, whether testate or intestate, and as such pass into the hands of the personal representative for the payment of the debts and the expenses of administration. Gordon v. James, 86 Miss. 719, 39 So. 18, 1905 Miss. LEXIS 93 (Miss. 1905).

3. Particular claims or charges as debts.

Since all the personal and real property of a deceased surety of an administratrix of a veteran's estate were assets of his estate and chargeable as such with his debts, a proceeding to enforce such charge against the property in the hands of such deceased surety's sole distributee because of administratrix's maladministration of the veteran's estate must be recognized. Hill v. Ouzts, 190 Miss. 341, 200 So. 254, 1941 Miss. LEXIS 54 (Miss. 1941).

When bank became insolvent and closed, deceased stockholder's double liability matured, standing in same class as other unsecured debts, and became charge on estate's entire personalty and realty. Gift v. Love, 164 Miss. 442, 144 So. 562, 1932 Miss. LEXIS 252 (Miss. 1932).

Heirs hold legal title to land subject to charge of ancestor's debts, though indebtedness be not ascertained at death. Gift v. Love, 164 Miss. 442, 144 So. 562, 1932 Miss. LEXIS 252 (Miss. 1932).

Where devise was void and deceased bank stockholder's heirs obtained judgment against testamentary trustee for proceeds of land sold, judgment claim held inferior to bank's double liability claim on stock, and heirs took remaining land subject to such liability. Gift v. Love, 164 Miss. 442, 144 So. 562, 1932 Miss. LEXIS 252 (Miss. 1932).

Before bank went into liquidation, no compromise settlement could be made between bank, stockholder's heirs, and testamentary trustee, which would result in defeating bank's right to enforce double liability. Gift v. Love, 164 Miss. 442, 144 So. 562, 1932 Miss. LEXIS 252 (Miss. 1932).

Bank's quitclaim deed of deceased stockholder's and debtor's land to heirs in settlement transaction, whereby heirs took certain assets in satisfaction of their judgment against estate which was inferior to bank's claim, held not supported by consideration. Gift v. Love, 164 Miss. 442, 144 So. 562, 1932 Miss. LEXIS 252 (Miss. 1932).

That bank, without consideration, quitclaimed deceased bank stockholder's land to heirs, pursuant to compromise settlement, and took bank stock in satisfaction of bank's claim for loan held not to preclude superintendent of banks, after bank closed, from enforcing stockholder's double liability against land quitclaimed. Gift v. Love, 164 Miss. 442, 144 So. 562, 1932 Miss. LEXIS 252 (Miss. 1932).

The liability of a surety on a guardian's bond is a debt within the statute, charging the lands of a decedent with his estate over and above what his personal estate may be sufficient to pay. Savings Bldg. & Loan Ass'n v. Tart, 81 Miss. 276, 32 So. 115, 1902 Miss. LEXIS 103 (Miss. 1902).

4. Intent of testator.

A will manifests the testator's intention that the property transferred to his wife be free of estate taxes where "Item IV" exempts from the payment of estate taxes and administration costs those bequests made earlier in the will to his wife and "Item III" specifically states that his wife is to receive $4,800 a year "free of any debts" and therefore this property cannot bear the burden of estate taxes. Waldrup v. United States, 499 F. Supp. 820, 1980 U.S. Dist. LEXIS 16059 (N.D. Miss. 1980).

This statute does not prohibit the testator himself from making, by his will, his own directions as to the order or priority of the application of his estate in the payment of his debts. Temple v. First Nat'l Bank, 202 Miss. 92, 30 So. 2d 605, 1947 Miss. LEXIS 245 (Miss. 1947).

Notwithstanding the provisions of this section [Code 1942, § 539], a testator may charge his real property with the entire burden of the payment of his debts to the complete exoneration of his personalty, if and when the real estate is sufficient to do so, or he may apportion the burden between real and personal property, the will and not the statute controlling as between legatees, devisees, and distributees. Temple v. First Nat'l Bank, 202 Miss. 92, 30 So. 2d 605, 1947 Miss. LEXIS 245 (Miss. 1947).

This statute in no way affects the rule that when a testator makes bequests of his personalty and no devise of his realty, the latter is charged with his debts to the exoneration of the bequests. Temple v. First Nat'l Bank, 202 Miss. 92, 30 So. 2d 605, 1947 Miss. LEXIS 245 (Miss. 1947).

The property specifically set aside by testator to take care of debts, costs, and expenses of the estate proving insufficient, descendible personalty and realty were required to be first exhausted in the payment of such debts, etc., before encroaching upon the legacies provided for in the will, in view of testator's directions that such legacies should be invaded and abated for such purpose only as a last resort. Temple v. First Nat'l Bank, 202 Miss. 92, 30 So. 2d 605, 1947 Miss. LEXIS 245 (Miss. 1947).

RESEARCH REFERENCES

ALR.

Amount of funeral expenses allowable against decedent's estate. 4 A.L.R.2d 995.

Claims for expenses of last sickness or for funeral expenses as within contemplation of statute requiring presentation of claims against decedent's estate, or limiting time for bringing action thereon. 17 A.L.R.4th 530.

Lis pendens: grounds for cancellation prior to termination of underlying action, absent claim of delay. 49 A.L.R.4th 242.

Law Reviews.

1978 Mississippi Supreme Court Review: Miscellaneous. 50 Miss. L. J. 165, March, 1979.

§ 91-7-93. Inventory of money and property owned by decedent at time of death.

The executor or administrator shall, within ninety (90) days of the grant of his letters unless further time be allowed by the court or clerk, file an inventory, verified by oath, of the money and property owned by the decedent at the time of death, listing it with reasonable detail, and indicating as to each listed item, its market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item.

There shall be no requirement for filing an inventory if the requirement of filing an inventory is waived in the testator's will. The court or the chancellor may also waive the requirement for filing an inventory in an intestate estate upon petition to the court by the administrator. Even though the requirement of filing an inventory is waived in the testator's will or waived by the court or the chancellor upon petition to the court by the administrator in an intestate

estate, the court or the chancellor may later order the executor or administrator to file an inventory upon the petition of a beneficiary or other interested party if the court or the chancellor determines that the filing of inventory is necessary or advisable.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (78); 1857, ch. 60, art. 73; 1871, § 1127; 1880, § 2018; 1892, § 1864; 1906, § 2039; Hemingway's 1917, § 1704; 1930, § 1644; 1942, § 540; Laws, 2019, ch. 458, § 1, eff from and after July 1, 2019.

JUDICIAL DECISIONS

1. In general.

Intervention in estate proceedings is a proper mode of seeking correction of the inventory. Rayborn v. McGill, 243 Miss. 585, 139 So. 2d 356, 1962 Miss. LEXIS 379 (Miss. 1962).

One listed in the inventory as owing decedent's estate may intervene for the purpose of contesting the item. Rayborn v. McGill, 243 Miss. 585, 139 So. 2d 356, 1962 Miss. LEXIS 379 (Miss. 1962).

In determining what is received by administrator, court may look to appraisement. Hayes v. National Surety Co., 169 Miss. 676, 153 So. 515, 1934 Miss. LEXIS 67 (Miss. 1934).

Statutory provision that administrator shall be charged with what is shown by appraisement does not preclude proper parties from proving that articles appraised were actually worth more than respective appraised amounts. Hayes v. National Surety Co., 169 Miss. 676, 153 So. 515, 1934 Miss. LEXIS 67 (Miss. 1934).

Appraisement, as regards items with which it is authorized by law to deal, stands as correct charge prima facie against administrator. Hayes v. National Surety Co., 169 Miss. 676, 153 So. 515, 1934 Miss. LEXIS 67 (Miss. 1934).

Statutory provision, that administrator shall stand charged with appraisement unless he show cause to contrary, does not limit showing to one by administrator himself, but showing may be made by any proper person sought to be charged with administrator's liability. Hayes v. National Surety Co., 169 Miss. 676, 153 So. 515, 1934 Miss. LEXIS 67 (Miss. 1934).

In action against administrator of administrator, apparent defects in appraisement, introduced to show what administrator received, were supplied by operation of presumption that incidental procedural steps which should have been taken were taken. Hayes v. National Surety Co., 169 Miss. 676, 153 So. 515, 1934 Miss. LEXIS 67 (Miss. 1934).

Appraisement was no evidence against administrator in regard to accounts due estate, life insurance, and money on hand, because appraisement does not legally deal with money and choses in action, since such items are to be returned by inventory. Hayes v. National Surety Co., 169 Miss. 676, 153 So. 515, 1934 Miss. LEXIS 67 (Miss. 1934).

That administrator actually received more or less than was charged to him by appraisement may be shown by competent evidence adduced by any proper party in interest. Hayes v. National Surety Co., 169 Miss. 676, 153 So. 515, 1934 Miss. LEXIS 67 (Miss. 1934).

Although appraisement was no evidence against administrator regarding insurance and cash, he was chargeable with insurance collected and cash received where evidence outside appraisement showed he received them. Hayes v. National Surety Co., 169 Miss. 676, 153 So. 515, 1934 Miss. LEXIS 67 (Miss. 1934).

Where cotton crop was produced by tenants working on shares and landlord's estate was entitled to only one-third of crop, administrator was chargeable only with such one-third of crop. Hayes v. National Surety Co., 169 Miss. 676, 153 So. 515, 1934 Miss. LEXIS 67 (Miss. 1934).

On accounting administrator is chargeable with actual value of property coming into his hands rather than value fixed by appraiser. Davis v. Blumenberg, 107 Miss. 432, 65 So. 503, 1914 Miss. LEXIS 102 (Miss. 1914).

RESEARCH REFERENCES

Am. Jur.
31 Am. Jur. 2d, Executors and Administrators § 161 et seq.
9A Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 371 et seq. (inventory and appraisal).

CJS.
34 C.J.S., Executors and Administrators § 197 et seq.

Law Reviews.
Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March, 1982.

§ 91-7-95. Supplementary inventory or appraisement.

If any property not included in the original inventory comes to the knowledge of the executor or administrator, or if the executor or administrator learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed, or furnish copies thereof or information thereof to persons interested in the new information.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (79); 1857, ch. 60, art. 75; 1871, § 1129; 1880, § 2020; 1892, § 1866; 1906, § 2041; Hemingway's 1917, § 1706; 1930, § 1645; 1942, § 541; Laws, 2019, ch. 458, § 2, eff from and after July 1, 2019.

§ 91-7-97. Adoption of collector's inventory or new inventory.

In case an inventory be returned by a temporary administrator, the executor or administrator who may succeed to the administration shall, within ninety days after the grant of his letters, either return a new inventory in place of the collector's inventory or file a written acknowledgment of the receipt of the articles contained in the first inventory and consent to be answerable for the same.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (80); 1857, ch. 60, art. 76; 1871, § 1130; 1880, § 2021; 1892, § 1867; 1906, § 2042; Hemingway's 1917, § 1707; 1930, § 1646; 1942, § 542.

RESEARCH REFERENCES

Am. Jur.
9A Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Form 431.1 (Petition or application – For extension of time to file inventory and appraisement).

§ 91-7-99. All to join in returning inventory.

If there be more than one executor, administrator, or temporary administrator, they shall all join in returning the inventories. If one or more refuse to do so, the others may return them, and the power and authority of the person so refusing shall thereafter cease. Those who return the inventory shall proceed in the administration, unless the delinquent, within sixty days, assign a reasonable excuse which the court may deem satisfactory.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (86); 1857, ch. 60, art. 78; 1871, § 1132; 1880, § 2022; 1892, § 1869; 1906, § 2044; Hemingway's 1917, § 1709; 1930, § 1647; 1942, § 543.

§ 91-7-101. Debt from executor or administrator inventoried.

The naming of an executor in a will shall not operate to extinguish any claim which the deceased had against him, but it shall be the duty of every such executor accepting the trust to give in such claim in the list of debts. On his failure to give in such claim or any part thereof, any person interested in the estate may allege the facts by petition to the court, and the court shall decide on the validity of the claim, if it be denied. When the claim is established, the executor shall account for it as a debtor to the estate, and not otherwise; and in the same way and subject to all the foregoing provisions, an administrator shall give in a claim against himself.

HISTORY: Codes, Hutchinson's 1848, ch. 49; art. 1 (88); 1857, ch. 60, art. 74; 1871, § 1128; 1880, § 2019; 1892, § 1865; 1906, § 2040; Hemingway's 1917, § 1705; 1930, § 1648; 1942, § 544.

Cross References — Claim of executor or administrator against estate, see § 91-7-163.

JUDICIAL DECISIONS

1. In general.

"To give in" the claim does not operate as an estoppel on the executor or administrator to show that the same was invalid. Franks v. Wanzer, 25 Miss. 121, 1852 Miss. LEXIS 158 (Miss. 1852).

A failure by an administrator to make an inventory of the debt due by him to his intestate may be a breach of duty for which he is liable on his bond; yet it does not follow that the amount of the debt is to be treated as so much money in his hands. Kelsey v. Smith, 2 Miss. 68, 1834 Miss. LEXIS 14 (Miss. 1834).

§ 91-7-103. Summary proceeding for discovery of assets.

If the goods, chattels, and effects are improperly withheld from the executor or administrator, then he shall not be answerable for a failure to return the inventories herein required until the goods, chattels, and effects, or some part thereof, have been received. If the executor or administrator shall have cause to believe that any of the assets of the estate are concealed or have been or are wrongfully withheld from him, or that any person has in his possession or under his control any records, books, or documents containing evidence concerning such assets and the ownership thereof, or has knowledge or information thereof otherwise, then it shall be the duty of such executor or administrator to forthwith proceed by a summary petition before the court or chancellor against all persons suspected of having concealed or wrongfully withheld such assets, as well as all persons having books, records, documents, or information relating thereto, for a discovery of the assets of the estate and all adverse claim thereto, if any. All persons made parties to such petition may be compelled by attachment for contempt to discover under oath by answer filed or testimony given, either or both at such time and place as the court or chancellor may direct, all the facts known to them concerning the assets of the estate and of all adverse claims thereto, if any. If on the hearing it shall appear that any person has property or assets of the estate to which there is no adverse claim, the court or chancellor may direct it to be delivered to the executor or administrator, who shall forthwith account therefor in his inventory. No decree shall be rendered in such proceeding concerning any adverse claim set up by any person to any of the assets. The costs of such proceeding shall be borne by the estate.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (80); 1857, ch. 60, art. 76; 1871, § 1130; 1880, § 2021; 1892, § 1868; 1906, § 2043; Hemingway's 1917, § 1708; 1930, § 1649; 1942, § 545; Laws, 1936, ch. 241.

JUDICIAL DECISIONS

1. Accounting.

Because the trustee of an educational trust was not compelled to account to the chancery court, but submitted to the accounting on her own accord, it did not matter that the accounting was not under oath. Fuller v. Kelly (In re Fuller), 203 So. 3d 1147, 2016 Miss. App. LEXIS 733 (Miss. Ct. App. 2016).

§ 91-7-105. Failure to return inventory.

If any executor, administrator, or temporary administrator fail to return proper inventories within the time prescribed by law or by order of the court, a summons returnable in not less than five days may, on application of any person interested, be issued for such executor, administrator, or collector to show cause why such inventory hath not been returned. If the summons be returned executed and such party do not appear or, appearing, fail to show good cause, the court, or clerk in vacation, shall revoke the letters and grant administration anew.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (85); 1857, ch. 60, art. 77; 1871, § 1131; 1880, § 2023; 1892, § 1870; 1906, § 2045; Hemingway's 1917, § 1710; 1930, § 1650; 1942, § 546.

RESEARCH REFERENCES

ALR.

Delay of executor or administrator in filing inventory, account, or other report, or in completing administration and distribution of estate, as ground for removal. 33 A.L.R.4th 708.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 490.

§ 91-7-107. Perfect inventory may be compelled.

If any person interested discover that the inventory returned does not contain a full account of all the property, goods, chattels, and effects of the deceased, such person may, on petition to the court, have the executor, administrator, or temporary administrator cited to appear and show cause why an additional inventory should not be returned. If, on hearing, the court be satisfied that a true inventory was not originally returned, it may order the executor or administrator to return a new one; and on his failure to do so, his letters may be revoked. If the title to any property not inventoried be in dispute, it shall be sufficient for the executor, administrator, or collector so to report; and he shall not be required to return an additional inventory until the title be settled in his favor. It shall also be the duty of every executor and administrator to return additional inventories at least once in each year of the increase of the property of the estate, if there be any such increase.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (87); 1857, ch. 60, art. 79; 1871, § 1133; 1880, § 2024; 1892, § 1871; 1906, § 2046; Hemingway's 1917, § 1711; 1930, § 1651; 1942, § 547.

JUDICIAL DECISIONS

1. In general.

In a contest between residuary legatees of a will and beneficiaries of an alleged gift inter vivos of certain separate stock which was by the will directed to be sold by the executors along with other assets of the estate for the payment of numerous legacies, wherein the residuary legatee sought to compel a more complete inventory by including such corporate stock, the burden of proof was upon the surviving executor and those claiming the stock, not as purchasers for value, to prove that such stock was not a part of the assets of the estate being administered. Lindeman's Estate v. Herbert, 188 Miss. 842, 193 So. 790, 1940 Miss. LEXIS 13 (Miss. 1940).

RESEARCH REFERENCES

ALR.

Delay of executor or administrator in filing inventory, account, or other report, or in completing administration and distribution of estate, as ground for removal. 33 A.L.R.4th 708.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators §§ 490, 491.

CJS.

34 C.J.S., Executors and Administrators § 172.

§ 91-7-109. Inventory and appraisement by qualified disinterested persons.

The executor or administrator may employ a qualified and disinterested appraiser to assist him in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (72); 1857, ch. 60, art. 70; 1871, § 1124; 1880, § 2014; 1892, § 1872; 1906, § 2047; Hemingway's 1917, § 1712; 1930, § 1652; 1942, § 548; Laws, 2019, ch. 458, § 3, eff from and after July 1, 2019.

Cross References — Compensation of appraisers, see § 25-7-67.
Inventory by temporary administrator, see § 91-7-55.
Report of appraisers, see § 91-7-137.

JUDICIAL DECISIONS

1. In general.
An administrator has nothing to do with the appointment of appraisers. O'Brian Bros. v. Wilson, 82 Miss. 93, 33 So. 946 (Miss. 1903).

RESEARCH REFERENCES

Am. Jur.
31 Am. Jur. 2d, Executors and Administrators § 493.
9A Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 421 et seq. (appointment and qualification of appraisers).

§ 91-7-111. Repealed.

Repealed by Laws, 2019, ch. 458, § 23, eff from and after July 1, 2019.
§ 91-7-111. [Codes, Hutchinson's 1848, ch. 49, art. 1 (71); 1857, ch. 60, art. 69; 1871, § 1123; 1880, § 2015; 1892, § 1873; 1906, § 2048; Hemingway's 1917, § 1713; 1930, § 1653; 1942, § 549.]

Editor's Notes — Former § 91-7-111 provided for the use of three or more appraisers in each county in which property of personal estates was located.

§ 91-7-113. Repealed.

Repealed by Laws, 2019, ch. 458, § 25, eff from and after July 1, 2019.
§ 91-7-113. [Codes, Hutchinson's 1848, ch. 49, art. 1 (72); 1857, ch. 60, art. 70; 1871, § 1124; 1880, § 2014; 1892, § 1874; 1906, § 2049; Hemingway's 1917, § 1714; 1930, § 1654; 1942, § 550.]

Editor's Notes — Former § 91-7-113 provided a warrant for appraisers form.

§ 91-7-115. Repealed.

Repealed by Laws, 2019, ch. 458, § 24, eff from and after July 1, 2019.
§ 91-7-115. [Codes, 1892, § 1875; 1906, § 2050; Hemingway's 1917, § 1715; 1930, § 1655; 1942, § 551.]

Editor's Notes — Former § 91-7-115 required appointed appraisers to take an oath and allowed vacant appraiser positions to be filled.

§ 91-7-117. Executor or administrator to set apart exempt property.

It shall be the duty of the executor or administrator to set apart to the widow and children, or to the widow if there be no children, or to the children if there be no widow, such personal property as is exempt by law from execution. The action of the executor or administrator shall not be necessary to the title of the widow and children to the exempt property, which shall vest in them by operation of law on the death of the husband and father.

HISTORY: Codes, 1871, § 1290; 1880, § 1278; 1892, § 1876; 1906, § 2051; Hemingway's 1917, § 1716; 1930, § 1656; 1942, § 552; Laws, 2019, ch. 458, § 4, eff from and after July 1, 2019.

Cross References — Homestead exemption generally, see § 85-3-31 et seq.

Descent of exempt property, see § 91-1-19.

Designation of exempt property in appraisers' report, see § 91-7-137.

JUDICIAL DECISIONS

1. In general.

Title to household furniture vested in testator's children, and was not chargeable to administrator. Fidelity & Deposit Co. v. Doughtry, 181 Miss. 586, 179 So. 846, 1938 Miss. LEXIS 99 (Miss. 1938).

Where deceased share tenant left nothing except exempt property, administration was unnecessary; hence widow and children having unsuccessfully demanded tenant's share from landlord could recover in replevin. Williams v. Sykes, 170 Miss. 88, 154 So. 267, 154 So. 727, 1934 Miss. LEXIS 100 (Miss. 1934).

Widow, as administratrix de bonis non, could not be charged with entire personal property received, but only as to part not exempt, though appraisers did not set exempt property apart. Hayes v. National Surety Co., 169 Miss. 676, 153 So. 515, 1934 Miss. LEXIS 67 (Miss. 1934).

Exempt property descends freed not only from debts incurred by owner in lifetime, but also expenses of last illness and funeral, regardless of whether estate is solvent. De Baum v. Hulett Undertaking Co., 169 Miss. 488, 153 So. 513, 1934 Miss. LEXIS 66 (Miss. 1934).

Homestead is not subject to sale to pay year's allowance to widow. Miers v. Miers, 160 Miss. 746, 133 So. 133, 1931 Miss. LEXIS 135 (Miss. 1931).

RESEARCH REFERENCES

ALR.

Right of nonresident surviving spouse or minor children to allowance of property exempt from administration or to family allowance from local estate of nonresident decedent. 51 A.L.R.2d 1026.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators §§ 677-681.

9A Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 491 et seq. (exempt property).

CJS.

34 C.J.S., Executors and Administrators §§ 460-462, 466 et seq.

§§ 91-7-119 through 91-7-133. Repealed.

Repealed by Laws, 1976, ch. 407, § 44, eff from and after April 1, 1977.

§ 91-7-119. [Codes, 1942, § 553; Laws, 1936, ch. 237]

§ 91-7-121. [Codes, 1892, § 1909; 1906, § 2084; Hemingway's 1917, § 1751; 1930, § 1657; 1942, § 554]

§ 91-7-123. [Codes, 1892, § 1910; 1906, § 2085; Hemingway's 1917, § 1752; 1930, § 1658; 1942, § 555]

§ 91-7-125. [Codes, 1892, § 1911; 1906, § 2086; Hemingway's 1917, § 1753; 1930, § 1659; 1942, § 556]

§ 91-7-127. [Codes, 1892, § 1912; 1906, § 2087; Hemingway's 1917, § 1754; 1930, § 1660; 1942, § 557]

§ 91-7-129. [Codes, 1892, § 1913; 1906, § 2088; Hemingway's 1917, § 1755; 1930, § 1661; 1942, § 558]

§ 91-7-131. [Codes, 1892, § 1914; 1906, § 2089; Hemingway's 1917, § 1756; 1930, § 1662; 1942, § 559]

§ 91-7-133. [Codes, 1892, § 1915; 1906, § 2090; Hemingway's 1917, § 1757; 1930, § 1663; 1942, § 560]

Editor's Notes — Former § 91-7-119 was entitled: Sale of partnership interest.
Former § 91-7-121 was entitled: Inventory of partnership estates.
Former § 91-7-123 was entitled: Property delivered to surviving partner.
Former § 91-7-125 was entitled: Condition of partner's bond.
Former § 91-7-127 was entitled: Status of surviving partner.
Former § 91-7-129 was entitled: Survivor refusing to act.
Former § 91-7-131 was entitled: Executor's further bond in such case.
Former § 91-7-133 was entitled: Duties of surviving partners.

§ 91-7-135. Court or chancellor to set apart one year's support for family.

It shall be the duty of the court or the chancellor to set apart out of the effects of the decedent, for the spouse and children who were being supported by the decedent, or for the spouse if there be no such children, or for such children if there be no spouse, one (1) year's provision, including such provision as may be embraced in the exempt property set apart. If there be no provisions, or an insufficient amount, the court or the chancellor shall determine the sum necessary for the comfortable support of the spouse and children, or spouse or children, as the case may be, for one (1) year.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 17 (1); 1857, ch. 60, art. 172; 1871, §§ 1290, 1957; 1880, § 1279; 1892, § 1877; 1906, § 2052; Hemingway's 1917, § 1717; 1930, § 1664; 1942, § 561; Laws, 1992, ch. 321 § 1, eff from and after passage (approved April 20, 1992); Laws, 2019, ch. 458, § 5, eff from and after July 1, 2019.

Cross References — Exempt property generally, see § 85-3-1 et seq.
Descent of exempt property, see § 91-7-167.
Allowance for maintenance and education of ward, see § 93-13-35.

JUDICIAL DECISIONS

ANALYSIS

1. In general; nature of entitlement.
2. Who is entitled.
3. Effect of terms of, lack of, or renunciation of, will.
4. Authority, role of court.
5. Non-residents.
6. Spouse living apart from spouse; children living apart from parent.
7. Amount; payment.
8. Miscellaneous.

1. In general; nature of entitlement.

Real estate owned as tenants by the entirety vested exclusively in surviving wife upon husband's death, and thus did not become asset of husband's probate estate and was not available to be distributed in kind as widow's allowance. In re Osborne, 120 B.R. 64, 1990 Bankr. LEXIS 2184 (Bankr. N.D. Miss. 1990).

Right of widow to year's allowance is absolute, whatever may be condition of estate, and application therefor is matter with which administrator has no concern. Harwell v. Woody, 206 Miss. 863, 41 So. 2d 35, 1949 Miss. LEXIS 308 (Miss. 1949).

Administrator, as such, is without right to prosecute appeal from order of court decreeing year's allowance to widow of decedent, in absence of issue involving her status as widow entitled to allowance. Harwell v. Woody, 206 Miss. 863, 41 So. 2d 35, 1949 Miss. LEXIS 308 (Miss. 1949).

The right of a widow to an allowance for a year's support is absolute and cannot be conditioned on the payment by her to the administrator of her deceased husband's wages which she has collected. Westbrook v. Shotts, 200 Miss. 456, 27 So. 2d 683, 1946 Miss. LEXIS 309 (Miss. 1946).

Making a year's allowance for support of deceased's widow is part of jurisdiction of chancery court, which cannot be taken away nor impaired by legislature, so that authority in appraisers to set aside year's support does not deprive chancellor of authority. Prentiss v. Turner, 170 Miss. 496, 155 So. 214, 1934 Miss. LEXIS 158 (Miss. 1934).

Right of widow to year's support superior to lien of enrolled judgment. First Nat'l Bank v. Donald, 112 Miss. 681, 73 So. 723, 1916 Miss. LEXIS 162 (Miss. 1916).

Wife entitled to year's support under will of husband devising all his property to sisters to exclusion of wife. Whitehead v. Kirk, 106 Miss. 706, 64 So. 658, 1914 Miss. LEXIS 10 (Miss. 1914).

2. Who is entitled.

In order to be entitled to the widow's allowance, a widow need only show that she and decedent were living together as husband and wife at the time of his death. Waldrup v. United States, 499 F. Supp. 820, 1980 U.S. Dist. LEXIS 16059 (N.D. Miss. 1980).

A widow's allowance was properly denied where the widow did not make a motion for or in any other manner indicate that she wanted a widow's allowance set aside to her before the estate was finally closed, and where there was no suggestion of fraud. Thomas v. Bailey, 375 So. 2d 1049, 1979 Miss. LEXIS 2607 (Miss. 1979), overruled in part, Clark v. Neese, 131 So. 3d 556, 2013 Miss. LEXIS 643 (Miss. 2013).

Where widow and decedent were living together as husband and wife at time of decedent's death and he was under a duty to support her, widow's allowance was proper under Code 1942 § 561. Mills v. Mills, 279 So. 2d 917, 1973 Miss. LEXIS 1495 (Miss. 1973).

One claiming this allowance has the burden of showing that she was being supported by decedent. In re Will of Marshall, 243 Miss. 472, 138 So. 2d 482, 1962 Miss. LEXIS 364 (Miss. 1962).

A posthumous child has rights in the year's support. Womack v. Boyd, 31 Miss. 443, 1856 Miss. LEXIS 97 (Miss. 1856).

3. Effect of terms of, lack of, or renunciation of, will.

A widow is entitled to the statutory widow's allowance, regardless of a will, unless it clearly appears that the provisions of the will for the widow are in lieu of the year's support provided by statute. Rush v. Rush, 360 So. 2d 1240, 1978 Miss. LEXIS 2341 (Miss. 1978).

This section [Code 1942 § 561] applies to cases of testacy and intestacy alike except in the case of wills where it clearly appears that the provisions in the will for the widow and minor children of the decedent are in lieu of the 1 year's support provided for by the statute. Mills v. Mills, 279 So. 2d 917, 1973 Miss. LEXIS 1495 (Miss. 1973).

Allowance of a year's support to a widow renouncing her husband's will is within the chancellor's discretion. Sandifer v. Sandifer, 237 Miss. 464, 115 So. 2d 46, 1959 Miss. LEXIS 491 (Miss. 1959).

Widow's contract reciting that she waived right to renounce will of husband and take by inheritance held too indefinite to preclude widow from $3,000 as year's allowance provided by statute. Gidden v. Gidden, 176 Miss. 98, 167 So. 785, 1936 Miss. LEXIS 116 (Miss. 1936).

Will held not to show intention on part of testator that provisions therein for widow were to be in lieu of statutory allowance for support for year. Gilmer v. Gilmer, 151 Miss. 23, 117 So. 371, 1928 Miss. LEXIS 286 (Miss. 1928).

Widow and minor children entitled to year's support in case of will where provision of will not made in lieu of all other claim, or there is no inconsistency between will and provision for allowance. Stewart v. Stewart, 132 Miss. 515, 96 So. 694, 1923 Miss. LEXIS 74 (Miss. 1923).

4. Authority, role of court.

The fixing of the amount of the widow's allowance by the appraisers is not final, but is subject to approval or disapproval of the chancery court. Beckett v. Howorth, 237 Miss. 394, 115 So. 2d 48, 1959 Miss. LEXIS 483 (Miss. 1959).

Making a year's allowance for support of deceased's widow is part of jurisdiction of chancery court, which cannot be taken away nor impaired by legislature, so that authority in appraisers to set aside year's support does not deprive chancellor of authority. Prentiss v. Turner, 170 Miss. 496, 155 So. 214, 1934 Miss. LEXIS 158 (Miss. 1934).

Action of appraisers in making allowance for year's support to widow of decedent is not final, but only advisory to chancellor, and subject to his approval or disapproval. Prentiss v. Turner, 170 Miss. 496, 155 So. 214, 1934 Miss. LEXIS 158 (Miss. 1934).

If appraisers make no allowance for widow's support for a year, court or chancellor in vacation may, on proper petition therefor, make allowance. Gilmer v. Gilmer, 151 Miss. 23, 117 So. 371, 1928 Miss. LEXIS 286 (Miss. 1928).

5. Non-residents.

The statute has no application in favor of nonresidents. Barber v. Ellis, 68 Miss. 172, 8 So. 390, 1890 Miss. LEXIS 33 (Miss. 1890).

6. Spouse living apart from spouse; children living apart from parent.

Widow's allowance under Miss. Code Ann. §§ 91-7-135 and 91-7-141 was improper as the widow did not show that she was being supported by the decedent at the time of his death or that she was away from him without fault on her part since she had left the decedent's home by her own volition after his leg was amputated, and was living in her own home when he died. In re Estate of Estes, 111 So. 3d 1223, 2012 Miss. App. LEXIS 820 (Miss. Ct. App. 2012).

Where husband's obligation to support wife was terminated by a property settlement, the wife is not entitled to the statutory support allowance out of his estate. Will of Best v. Brewer, 236 Miss. 359, 111 So. 2d 262, 1959 Miss. LEXIS 325 (Miss. 1959).

A wife being supported by her husband at the time of his death in compliance with a decree for temporary alimony was entitled to an allowance for a year's support. Stringer v. Arrington, 202 Miss. 798, 32 So. 2d 879, 1947 Miss. LEXIS 342 (Miss. 1947).

Allowance to widow of support for one year was authorized where evidence warranted court in believing that separation of deceased and wife resulted from no fault of wife but was the fault of deceased and that his duty to support her continued. Vaughan v. Vaughan, 195 Miss. 463, 16 So. 2d 23, 1943 Miss. LEXIS 175 (Miss. 1943).

Wife living apart from husband without his fault, and not supported by him, is not entitled to a year's support from his estate. Byars v. Gholson, 147 Miss. 460, 112 So. 578, 1927 Miss. LEXIS 287 (Miss. 1927).

7. Amount; payment.

Where a decedent left an estate of an approximate value of $139,000, an allowance to the widow of $6,000 for one year's support was not excessive. Bryan v. Quinn, 233 Miss. 366, 102 So. 2d 124, 1958 Miss. LEXIS 392 (Miss. 1958).

Amount of widow's allowance is discretionary with chancellor where fees of administrator and counsel have been paid and award is $800 less than that recommended by appraisers. Harwell v. Woody, 206 Miss. 863, 41 So. 2d 35, 1949 Miss. LEXIS 308 (Miss. 1949).

The amount allowed by the appraisers to the widow for year's support is advisory to, but not binding upon, the chancellor. Moseley v. Harper, 202 Miss. 442, 32 So. 2d 192, 1947 Miss. LEXIS 296 (Miss. 1947).

In determining the amount of the widow's allowance, the chancellor should consider the value of the estate, the rights of others having an interest therein, the manner of living to which the widow was accustomed during her husband's life, her station in life and the demands of that station. Moseley v. Harper, 202 Miss. 442, 32 So. 2d 192, 1947 Miss. LEXIS 296 (Miss. 1947).

Refusal of chancellor to increase appraiser's allowance for widow's support from $5,000 to $8,500 was not an abuse of discretion, where items presented by widow to substantiate her petition for increase included improper items such as expenses for repairs, taxes and insurance upon her separate property, lot and clothing for burial of decedent, and other excessive costs. Moseley v. Harper, 202 Miss. 442, 32 So. 2d 192, 1947 Miss. LEXIS 296 (Miss. 1947).

Executor must turn over money awarded widow for year's support to her in cash; he cannot withhold it on ground she has property which belongs to estate. Pratt v. Pratt, 155 Miss. 237, 124 So. 323, 1929 Miss. LEXIS 275 (Miss. 1929).

Amount of allowance for support of widow is within discretion of chancellor. Gilmer v. Gilmer, 151 Miss. 23, 117 So. 371, 1928 Miss. LEXIS 286 (Miss. 1928); Whitehead v. Kirk, 106 Miss. 706, 64 So. 658, 1914 Miss. LEXIS 10 (Miss. 1914); Bryan v. Quinn, 233 Miss. 366, 102 So. 2d 124, 1958 Miss. LEXIS 392 (Miss. 1958).

Allowance of $2,400 for support of widow during year following decedent's death held not excessive. Gilmer v. Gilmer, 151 Miss. 23, 117 So. 371, 1928 Miss. LEXIS 286 (Miss. 1928).

In proceeding to set aside decree granting widow allowance for year's support, evidence regarding her separate income and income from property bequeathed held properly excluded. Gilmer v. Gilmer, 151 Miss. 23, 117 So. 371, 1928 Miss. LEXIS 286 (Miss. 1928).

8. Miscellaneous.

Homestead is not subject to sale to pay year's allowance to widow. Miers v. Miers, 160 Miss. 746, 133 So. 133, 1931 Miss. LEXIS 135 (Miss. 1931).

Notice to executor or legatees of proceedings by widow for year's allowance for support is not required. Gilmer v. Gilmer, 151 Miss. 23, 117 So. 371, 1928 Miss. LEXIS 286 (Miss. 1928).

RESEARCH REFERENCES

ALR.

Right of nonresident surviving spouse or minor children to allowance of property exempt from administration or to family allowance from local estate of nonresident decedent. 51 A.L.R.2d 1026.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators §§ 677-681.

9A Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 451 et seq. (family allowance).

CJS.

34 C.J.S., Executors and Administrators §§ 460-462, 466 et seq.

§ 91-7-137. Repealed.

Repealed by Laws, 2019, ch. 458, § 19, eff from and after July 1, 2019.

§ 91-7-137. [Codes, Hutchinson's 1848, ch. 49, art. 1 (75); 1857, ch. 60, arts. 71, 72; 1871, §§ 1125, 1126; 1880, §§ 2016, 2017; 1892, § 1878; 1906, § 2053; Hemingway's 1917, § 1718; 1930, § 1665; 1942, § 562.]

Editor's Notes — Former § 91-7-137 required the filing of the appraisers' reports with the court.

§ 91-7-139. Repealed.

Repealed by Laws 2019, ch. 458, § 20, eff from and after July 1, 2019.

§ 91-7-139. [Codes, 1892, § 1879; 1906, § 2054; Hemingway's 1917, § 1719; 1930, § 1666; 1942, § 563.]

Editor's Note — Former § 91-7-139 provided for an extension of time for appraisers to perform their duties and sanctions for failure to file an inventory.

§ 91-7-141. Court or chancellor may apportion year's allowance.

The court or the chancellor may apportion the one (1) year's allowance, or any part of it, according to the situation, rights, and interests of any of the children or the widow, and may direct the payment of any portion of the allowance which may be found necessary or proper to any of them.

HISTORY: Codes, 1871, § 1959; 1880, § 1281; 1892, § 1880; 1906, § 2055; Hemingway's 1917, § 1720; 1930, § 1667; 1942, § 564; Laws, 2019, ch. 458, § 6, eff from and after July 1, 2019.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Allowance improper.

1. In general.

If the widow be not the mother of the children, and they live apart, the latter will be entitled to have a fair proportion of the year's allowance, and the court will apportion it. Womack v. Boyd, 31 Miss. 443, 1856 Miss. LEXIS 97 (Miss. 1856).

2. Allowance improper.

Widow's allowance under Miss. Code Ann. §§ 91-7-135 and 91-7-141 was improper as the widow did not show that she was being supported by the decedent at the time of his death or that she was away from him without fault on her part since she had left the decedent's home by her own volition after his leg was amputated, and was living in her own home when he died. In re Estate of Estes, 111 So. 3d 1223, 2012 Miss. App. LEXIS 820 (Miss. Ct. App. 2012).

RESEARCH REFERENCES

ALR.

Right of nonresident surviving spouse or minor children to allowance of property exempt from administration or to family allowance from local estate of nonresident decedent. 51 A.L.R.2d 1026.

§ 91-7-143. Minor distributee or legatee maintained.

An executor or administrator of a solvent estate may defray the necessary and reasonable expenses of the maintenance and education of legatees or distributees who are minors and have no guardian, and may be allowed a credit therefor against the shares of the estate to which such minors are entitled on distribution. Before making such expenditures, he shall obtain the order of the court, or of the chancellor in vacation, authorizing him to make them.

HISTORY: Codes, 1880, § 2094; 1892, § 1954; 1906, § 2128; Hemingway's 1917, § 1796; 1930, § 1668; 1942, § 565.

Cross References — Maintenance of child under guardianship, see § 93-13-35 et seq.

§ 91-7-145. Notice to creditors of estate.

(1) The executor or administrator shall make reasonably diligent efforts to identify persons having claims against the estate. Such executor or administrator shall mail a notice to persons so identified, at their last known address, informing them that a failure to have their claim probated and registered by the clerk of the court granting letters within ninety (90) days after the first publication of the notice to creditors will bar such claim as provided in Section 91-7-151.

(2) The executor or administrator shall file with the clerk of the court an affidavit stating that such executor or administrator has made reasonably diligent efforts to identify persons having claims against the estate and has given notice by mail as required in subsection (1) of this section to all persons so identified. Upon filing such affidavit, it shall be the duty of the executor or administrator to publish in some newspaper in the county a notice requiring all persons having claims against the estate to have the same probated and registered by the clerk of the court granting letters, which notice shall state the time when the letters were granted and that a failure to probate and register within ninety (90) days after the first publication of such notice will bar the claim. The notice shall be published for three (3) consecutive weeks, and proof of publication shall be filed with the clerk. If a paper be not published in the county, notice by posting at the courthouse door and three (3) other places of public resort in the county shall suffice, and the affidavit of such posting filed shall be evidence thereof in any controversy in which the fact of such posting shall be brought into question.

(3) The filing of proof of publication as provided in this section shall not be necessary to set the statute of limitation to running, but proof of publication shall be filed with the clerk of the court in which the cause is pending at any time before a decree of final discharge shall be rendered; and the time for filing proof of publication shall not be limited to the ninety-day period in which creditors may probate claims.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (115); 1857, ch. 60, art. 81;

1871, § 1135; 1880, § 2026; 1892, § 1929; 1906, § 2103; Hemingway's 1917, § 1771; 1930, § 1669; 1942, § 566; Laws, 1920, ch. 302; Laws, 1928, ch. 69; Laws, 1975, ch. 373, § 4; Laws, 1989, ch. 582, § 2; Laws, 1994, ch. 430 § 1, eff from and after passage (approved March 17, 1994).

Cross References — Publication where estate is insolvent, see § 91-7-267.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Sufficiency of notice.
3. Failure to give notice.

1. In general.

The role played by the chancery court in probate proceedings under § 91-7-143, upon which the statute's time bar is dependent in that notice may be published only after an affidavit is filed with the clerk of court, is sufficient state action to implicate the due process clause of the Fourteenth Amendment to the United States Constitution; thus, a creditor's claim against an estate was a property interest protected by the Fourteenth Amendment. Vann v. Mississippi Neurosurgery, P.A. (In re Estate of Petrick), 635 So. 2d 1389, 1994 Miss. LEXIS 205 (Miss. 1994).

The time bar of § 91-7-145 did not apply, and therefore a creditor's untimely claim against an estate was valid, where the creditor was "reasonably ascer-tainable" and the administratrix merely published notice rather than providing notice by mail as mandated by the statute; furthermore, the insufficient notice violated the due process clause of the Fourteenth Amendment to the United States Constitution. Vann v. Mississippi Neurosurgery, P.A. (In re Estate of Petrick), 635 So. 2d 1389, 1994 Miss. LEXIS 205 (Miss. 1994).

Notice to creditors of decedent's estate signed by the then duly appointed and qualified administrator was valid, notwithstanding that he was removed, on motion of decedent's widow, on the same date that notice to the creditors was first published, and a creditor's claim filed some 2 months after expiration of the 90 day period from first publication date was time barred. Estate of Myers v. Myers, 498 So. 2d 376, 1986 Miss. LEXIS 2844 (Miss. 1986).

Whether the publication of notice to creditors required by § 91-7-145 is made in an appropriate newspaper brings into bearing § 13-3-31, which sets forth the requirements a newspaper must meet in order to qualify as a valid publisher of legal notices. Estate of Myers v. Myers, 498 So. 2d 376, 1986 Miss. LEXIS 2844 (Miss. 1986).

Contention that notice to creditors was not published in a newspaper which qualified as a valid publisher of legal notices, which was not raised in the court below, would not be considered by the Supreme Court on appeal. Estate of Myers v. Myers, 498 So. 2d 376, 1986 Miss. LEXIS 2844 (Miss. 1986).

Where decedent's first wife failed to file a claim for unpaid alimony against his estate within the statutory period of 90 days, she was estopped under § 91-7-145 from bringing her claim. Medders v. Ryle, 458 So. 2d 685, 1984 Miss. LEXIS 1871 (Miss. 1984).

Administrator is required to speedily publish notice to creditors requiring probate of claims within six months. McDowell v. Minor, 158 Miss. 360, 130 So. 484, 1930 Miss. LEXIS 57 (Miss. 1930).

Administrator could not delay in his duty to make prompt publication of notice to creditors and thereafter take advantage of delay in his own behalf. McDowell v. Minor, 158 Miss. 360, 130 So. 484, 1930 Miss. LEXIS 57 (Miss. 1930).

A decedent's estate is not liable for an assessment against the decedent as stockholder in a failed national bank, made in the decedent's lifetime, where a claim therefor was not presented within the time limited by the Mississippi statute. Mann v. Kleisdorff, 16 F.2d 997, 1927 U.S. App. LEXIS 3682 (5th Cir. Miss. 1927).

Claim not presented within six months after publication is not barred where notice not published for three consecutive weeks and no proof of publication is made and filed with clerk. Boutwell v. Farmers' & Traders' Bank, 118 Miss. 50, 79 So. 1, 1918 Miss. LEXIS 48 (Miss. 1918).

Court cannot after publication make a second publication shortening time allowed in first publication for probating and registering claims. Geisenberger v. Progress Knitting Mills, 113 Miss. 495, 74 So. 331, 1917 Miss. LEXIS 126 (Miss. 1917).

2. Sufficiency of notice.

Chancellor erred in holding that a creditor's claim against the decedent's estate was time barred under Miss. Code Ann. § 91-7-145, as no determination was even made as to whether the creditor was a reasonably ascertainable creditor. Further, § 91-7-145 did not specifically allow for notice by publication as a substitute for actual notice by mail; rather, notice by publication was a requirement in addition to providing the creditor notice by mail. Holston v. Ladner (In re Estate of Ladner), 911 So. 2d 673, 2005 Miss. App. LEXIS 663 (Miss. Ct. App. 2005).

Notice to creditors of estate to have claims probated and registered before chancery court clerk of certain county within specified six-month period held sufficient as against contention that notice was fatally defective because it did not indicate to creditors what court had granted letters of executorship. Floyd v. Chatham, 178 Miss. 137, 172 So. 504, 1937 Miss. LEXIS 191 (Miss. 1937).

Executor's notice to creditors not void because date in notice not that on which letters granted. George T. Webb & Co. v. Fogg, 134 Miss. 605, 99 So. 504, 1924 Miss. LEXIS 317 (Miss. 1924).

"Notice is hereby given to all creditors having claims against said estate to present same to the clerk of said court for probate and registration according to law, within six months from this date, or they will be forever barred," dated and signed by administrator, is sufficient. Stevens v. D. R. Dunlap Mercantile Co., 108 Miss. 690, 67 So. 160, 1914 Miss. LEXIS 260 (Miss. 1914).

Publication of notice dated May 26, 1910, in newspaper on June 3, 10 and 17, sufficient. Stevens v. D. R. Dunlap Mercantile Co., 108 Miss. 690, 67 So. 160, 1914 Miss. LEXIS 260 (Miss. 1914).

Notice stating that person publishing it was appointed administrator and advising all persons having claims to deal as law directs was not sufficient. Marshall v. John Deere Plow Co., 99 Miss. 284, 54 So. 948, 1911 Miss. LEXIS 209 (Miss. 1911).

Administrator's notice not void for use of word "file" instead of "register." Stokes v. Lemon & Gale Co., 96 Miss. 868, 52 So. 457, 1910 Miss. LEXIS 210 (Miss. 1910).

3. Failure to give notice.

Because the executrix failed in the executrix's statutory duty to provide notice to any creditors regarding the probate of the decedent's estate, the filing period for probate claims did not expire as the executrix failed to provide the required statutory notice to trigger the running of the filing period. Avakian v. Wilmington Trust N.A. (In re Estate of Avakian), 231 So. 3d 208, 2017 Miss. App. LEXIS 201 (Miss. Ct. App.), cert. denied, 229 So. 3d 122, 2017 Miss. LEXIS 492 (Miss. 2017).

RESEARCH REFERENCES

ALR.

What constitutes rejection of claim against estate to commence running of statute of limitations applicable to rejected claims. 36 A.L.R.4th 684.

Validity of nonclaim statute or rule provision for notice by publication to claimants against estate – post-1950 cases. 56 A.L.R.4th 458.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators §§ 620, 623.

9A Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 641 et seq. (notice to creditors).

8 Am. Jur. Legal Forms 2d, Executors and Administrators § 104:157 et seq. (creditors' claims).

CJS.
34 C.J.S., Executors and Administrators § 561.

§ 91-7-147. Newspaper notices dispensed with in small estates.

Where the value of an estate shall not be more than Five Hundred Dollars ($500.00), the court shall dispense with newspaper notices; and notices in lieu thereof shall be posted for thirty (30) days at the courthouse door and two (2) other public places in the county. Failure of persons having claims against the estate to have their claims probated and registered by the clerk of the court granting letters within ninety (90) days after the date on which notice is posted will bar such claims as provided in Section 91-7-151.

HISTORY: Codes, 1857, ch. 60, art. 97; 1871, § 1157; 1880, § 2066; 1892, § 1891; 1906, § 2066; Hemingway's 1917, § 1731; 1930, § 1670; 1942, § 567; Laws, 1994, ch. 430, § 2, eff from and after passage (approved March 17, 1994).

RESEARCH REFERENCES

ALR.
Validity of nonclaim statute or rule provision for notice by publication to claimants against estate-post-1950 cases. 56 A.L.R.4th 458.

§ 91-7-149. Probate of claims.

Any person desiring to probate his claim shall present to the clerk the written evidence thereof, if any, or if the claim be a judgment or decree, a duly certified copy thereof, or if there be no written evidence thereof, an itemized account or a statement of the claim in writing, signed by the creditor, and make affidavit, to be attached thereto, to the following effect, viz.: That the claim is just, correct, and owing from the deceased; that it is not usurious; that neither the affiant nor any other person has received payment in whole or in part thereof, except such as is credited thereon, if any; and that security has not been received therefor except as stated, if any. Thereupon, if the clerk shall approve, he shall indorse upon the claim the words following: "Probated and allowed for $________ and registered this ________ day of ________, A.D., ________," and shall sign his name officially thereto. Probate registration and allowance shall be sufficient presentation of the claim to the executor or administrator; provided, that should the clerk probate and allow and register the claim, but fail or neglect to indorse thereon the words, "Probated and allowed for $________ and registered the ________ day of ________, A.D., ________," and officially sign his name thereto, the court may, upon proper showing, allow the clerk to indorse on the claim, nunc pro tunc, the words, "Probated and allowed for $________ and registered, this the ________ day of ________, A.D., ________," and sign his name officially thereto. If the claim be based upon a demand of which there is no written evidence or upon an itemized account, the statement of said claim or the itemized account shall be retained and kept by the clerk among the official papers pertaining to the estate; and if the claim be based upon a promissory note or other instrument purporting to have been executed by the decedent, the creditor shall file with his claim either the original thereof or a duplicate of such original in the discretion of the creditor. If the original writing is presented to the clerk, it may be withdrawn by the creditor, and the clerk shall make a duplicate thereof. No specific writing or certificate shall be required to be made by the clerk on either the original writing or the duplicate retained by the clerk. In no instance shall an original writing be required to be presented to the clerk unless (a) a question is raised by the personal representative of the estate, or by any party in interest, as to the authenticity of the original or (b) in the circumstances it would be unfair to admit into evidence the duplicate in lieu of the original. In either of the above situations, the court or chancellor, upon good cause being shown, may require the creditor to produce the original before the court or clerk for the inspection of the personal representative or other party in interest, who may examine the original and who may make photographic copies thereof under the supervision of the clerk.

Notwithstanding the foregoing, any record, voucher, claim, check, draft, receipt, writing, account, statement, note or other evidence which may be furnished, filed, probated, presented or produced, or required to be produced, by a federally regulated bank, thrift or trust company shall be deemed to be an original admitted, furnished, filed, probated, presented, or produced for all purposes and with the same effect as the original, if such financial institution produces a copy of such evidence from a format of storage commonly used by financial institutions, whether electronic, imaged, magnetic, microphotographic or otherwise.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (90); 1857, ch. 60, art. 82; 1871, § 1137; 1880, § 2027; 1892, § 1932; 1906, § 2106; Hemingway's 1917, § 1774; 1930, § 1671; 1942, § 568; Laws, 1934, ch. 304; Laws, 1991, ch. 413, § 1; Laws, 1996, ch. 400, § 42, eff from and after passage (approved March 19, 1996).

Cross References — Power of chancery clerk to allow and register claims against estate, see § 9-5-141.

Register of claims to be kept by chancery clerk, see § 9-5-173.

Notice of contest of claim, see § 91-7-165.

Proceedings in insolvent estates, see § 91-7-261 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Mandatory nature of statute.
3. Claims subject to probate.
4. —Claim of executor or trustee.
5. Statement of claims.
6. Clerk's certificate.
7. Withdrawal of instruments.
8. Defective probate.
9. Affidavit.
10. Payment of claims.
11. Unprobated claims.
12. Limitations.
13. Written evidence.

1. In general.

Because a hospital was not entitled to sovereign immunity on its probated claim against an estate, the chancellor did not err by denying its sovereign-immunity claim; the chancellor had jurisdiction to adjudicate the probated claim filed by the hospital and contested by the estate because what was before the chancery court was the validity of the hospital's probated claim, not the estate's counterclaim for emotional distress, fraud, and punitive damages. In re Estate of Matute, 293 So. 3d 224, 2020 Miss. LEXIS 43 (Miss. 2020).

The amendment to § 91-7-149 which deleted the requirement of filing the original promissory note when a creditor makes a claim against the estate, would be retroactively applied to a case which was before the court when the amendment was enacted. Bell v. Mitchell, 592 So. 2d 528, 1991 Miss. LEXIS 968 (Miss. 1991).

In order for a claimant to introduce evidence to support a claim against an estate for medical expenses upon contest, the claimant may proceed under § 41-9-119, but to do this, he or she must be allowed to go into court to present the bills incurred and to testify for what purpose they were incurred. Since a summary judgment, by its nature, disposes of a case before a trial is commenced, summary judgment practice under Rule 56, Miss. R. Civ. P. is inapplicable in contests of probated claims because it is inconsistent with the statutory procedure which necessitates that a claimant enter court to introduce evidence in support of his or her claim and permits a personal representative to rebut the claim. Thus, the procedure for summary judgment is not applicable to dispose of claims made under § 91-7-149. Biloxi Regional Medical Center, Inc. v. Estate of Ross, 546 So. 2d 667, 1989 Miss. LEXIS 297 (Miss. 1989).

A substantial compliance with the statute is sufficient. Central Optical Merchandising Co. v. Estate of Lowe, 249 Miss. 61, 160 So. 2d 673, 1964 Miss. LEXIS 376 (Miss. 1964).

The purposes of nonclaim statutes are to furnish the legal representative with evidence of the validity of the claim, give him an opportunity to contest the same, and enable him to justify the payment and be allowed credit therefor in his account. Whitaker v. Davenport, 193 Miss. 523, 10 So. 2d 202, 1942 Miss. LEXIS 135 (Miss. 1942).

Probating, allowing, and registering of claims against estate are not "judicial acts" on part of clerk. Poyner v. Gilmore, 171 Miss. 859, 158 So. 922, 1935 Miss. LEXIS 25 (Miss. 1935).

Purpose of additional provisions, incorporated into statute regulating manner of filing claims for probate was to require evidences of debt to remain on file in clerk's office, where heirs, or other creditors or parties in interest, could better examine into facts, so as to avoid collection of false claims. Jordan v. Love, 171 Miss. 523, 157 So. 877, 1934 Miss. LEXIS 262 (Miss. 1934).

Claim against estate of deceased stockholder in insolvent bank, for personal liability filed and marked "probated" by clerk, held not void because lost or mislaid by clerk. Carothers v. Love, 169 Miss. 250, 152 So. 483, 153 So. 389, 1934 Miss. LEXIS 8 (Miss. 1934).

Law providing manner for filing claims against estate of decedent should be strictly construed against creditors. Jennings v. Lowery & Berry, 147 Miss. 673, 112 So. 692, 1927 Miss. LEXIS 304 (Miss. 1927).

2. Mandatory nature of statute.

A claimant's pleadings were adequate under § 91-7-149 where she did all that the statute required with the limited exception of the label on her pleading, in that she set forth the nature of her claim and summarized its factual basis, and she complied with the important verification requirements of the statute. Williams v. Mason, 556 So. 2d 1045, 1990 Miss. LEXIS 34 (Miss. 1990).

Whenever claim against estate of decedent, to which affidavit in compliance with statute is attached, is presented to clerk for probate, he has mandatory duty to admit it to probate by attaching his certificate thereto. Poyner v. Gilmore, 171 Miss. 859, 158 So. 922, 1935 Miss. LEXIS 25 (Miss. 1935).

Technical precision of form is not required to satisfy statute regulating manner of probating claims, although statute is mandatory as to its substance. Deposit Guaranty Bank & Trust Co. v. Jordan's Estate, 171 Miss. 332, 157 So. 876, 1934 Miss. LEXIS 260 (Miss. 1934); Fidelity Mut. Life Ins. Co. v. Goldstein, 187 Miss. 285, 192 So. 584, 1940 Miss. LEXIS 206 (Miss. 1940).

Substance of law on subject of probating claims against estate is mandatory. Merchants & Mfrs. Bank v. Fox, 165 Miss. 833, 147 So. 789, 1933 Miss. LEXIS 313 (Miss. 1933); Ellsworth v. Fox, 147 So. 790 (Miss. 1933); Jordan v. Love, 171 Miss. 523, 157 So. 877, 1934 Miss. LEXIS 262 (Miss. 1934); Strange v. Strange, 189 Miss. 349, 197 So. 830, 1940 Miss. LEXIS 126 (Miss. 1940).

Statute requiring endorsement of clerk is mandatory. Stevens v. D. R. Dunlap Mercantile Co., 108 Miss. 690, 67 So. 160, 1914 Miss. LEXIS 260 (Miss. 1914).

The statute is mandatory and an affidavit which is not in effect a compliance with it will not give validity to the probation, allowance and registration of a claim. Cheairs v. Cheairs, 81 Miss. 662, 33 So. 414, 1902 Miss. LEXIS 180 (Miss. 1902).

3. Claims subject to probate.

A former wife proved a valid claim against her former husband's estate for $30,600, where there was a prior court judgment finding that the husband was $600 in arrears in alimony payments, and their divorce decree required the husband to carry a $30,000 life insurance policy on his own life naming the wife as the policy's primary beneficiary after payment of then existing pledged debts, but the husband had let the policy lapse. Raspilair v. Estate of Raspilair, 583 So. 2d 970, 1991 Miss. LEXIS 458 (Miss. 1991).

In an action seeking to compel a perfect inventory, void certain conveyances, partition property, and establish a claim against an estate, §§ 91-7-149, 91-7-251 had no application and petitioner's claim was improperly dismissed as untimely, where the claim was not for a specific money demand due or to become due but rather was an inchoate and contingent claim involving the ownership by co-tenancy of specific property. Maxwell v. Yuncker, 419 So. 2d 580, 1982 Miss. LEXIS 2165 (Miss. 1982).

Defaulted instalments of alimony can be recovered against the husband's personal representative and claim therefor may be probated as a decree. Schaffer v. Schaffer, 209 Miss. 220, 46 So. 2d 443, 1950 Miss. LEXIS 381 (Miss. 1950).

Purchaser's claim against decedent's estate for purchase price of royalty interest in oil and gas lease because of breach of warranty based on decedent's prior conveyance of his interest is a probatable claim against the estate of decedent, there having been no production of oil and gas under the lease prior to decedent's death. Dale v. Hickman, 207 Miss. 606, 42 So. 2d 810, 1949 Miss. LEXIS 373 (Miss. 1949).

A secured creditor is free to stand upon his security and is under no duty to probate his debt. Campbell v. Cason, 206 Miss. 420, 40 So. 2d 258, 1949 Miss. LEXIS 271 (Miss. 1949).

A claim that certain funds in a bank belong to one other than the decedent does not constitute a claim against the estate capable of being probated. Matthews v. Redmond, 202 Miss. 253, 32 So. 2d 123, 1947 Miss. LEXIS 268 (Miss. 1947).

Person who took paralytic into her home and continuously cared for him for a period of two and one-half years until his death, pursuant to an oral agreement that in return such paralytic would make will leaving her his entire estate consisting of realty and personalty, where paralytic did execute such a will but subsequently executed a new will leaving all his property to his nephew, at least had a right to establish her claim quantum meruit. Johnston v. Tomme, 199 Miss. 337, 24 So. 2d 730, 1946 Miss. LEXIS 202 (Miss. 1946).

A claim against a decedent's estate for maintenance, nursing and other care furnished by an old men's home upon the decedent's false and fraudulent representation that he was a pauper was not a claim for unliquidated damages for a tort, which under the statute could not be probated, but a claim for reasonable compensation for care and support. Old Men's Home, Inc. v. Lee's Estate, 191 Miss. 669, 2 So. 2d 791, 4 So. 2d 235, 1941 Miss. LEXIS 144 (Miss. 1941).

Judgments obtained against foreign administrator cannot be probated under statute and cannot be basis of claim against estate administered in state. Voyles v. Robinson, 151 Miss. 585, 118 So. 420, 1928 Miss. LEXIS 338 (Miss. 1928).

Physicians' and druggists' bills should be separately probated. Gaulden v. Ramsey, 123 Miss. 1, 85 So. 109, 1920 Miss. LEXIS 1 (Miss. 1920).

4. —Claim of executor or trustee.

Under law permitting executor to probate individual account, fact that trustee, acting with an executor and trustee in petitioning for sale of realty to pay debts, had a probated account did not show fraud and his good faith presumed. Brickell v. Lightcap, 115 Miss. 417, 76 So. 489, 1917 Miss. LEXIS 218 (Miss. 1917), overruled, Harper v. Harper, 491 So. 2d 189, 1986 Miss. LEXIS 2508 (Miss. 1986).

5. Statement of claims.

No fixed form of claim is ordinarily required, nor is the technical accuracy and certainty of description essential in pleading necessary, so long as it gives such information concerning the nature and amount of the demand as to enable the representative to act intelligently upon it. Central Optical Merchandising Co. v. Estate of Lowe, 249 Miss. 61, 160 So. 2d 673, 1964 Miss. LEXIS 376 (Miss. 1964).

Though a claim may satisfy minimum requirements the personal representative may require the creditor to make it more definite and certain where it does not sufficiently advise him of its essential details or nature. Central Optical Merchandising Co. v. Estate of Lowe, 249 Miss. 61, 160 So. 2d 673, 1964 Miss. LEXIS 376 (Miss. 1964).

Where a claimant presents in good faith a claim in substantial compliance with the statute, it is not equitable for the decedent's representation to wait until the time for filing claims has expired and then to assert that the itemized account is not technically sufficient and thereby to bar the claim. Central Optical Merchandising Co. v. Estate of Lowe, 249 Miss. 61, 160 So. 2d 673, 1964 Miss. LEXIS 376 (Miss. 1964).

A claim for premiums upon insurance policies is sufficiently itemized where it shows the kind of policy, the policy number, the period covered, the amount due on final audit, and the due date. Stewart v. Estate of Williamson, 243 Miss. 450, 138 So. 2d 742, 1962 Miss. LEXIS 361 (Miss. 1962).

The statute clearly contemplates that, in presenting claims against the estate of a decedent, the evidence or statement of same probated must on its face show a prima facie right in the claimant to recover from the estate the amount claimed, and that it must disclose the nature and amount of the claim with sufficient prevision to bar, when paid, an action therefor. Johnson v. Hannon, 211 Miss. 207, 51 So. 2d 283, 1951 Miss. LEXIS 350 (Miss. 1951).

Where a claim was for services rendered as a servant of deceased for washing, ironing, cooking, cleaning house and etc., for 842 days at a $1.00 per day and night totalling the sum of $842, the statement of claim was sufficient on its face to inform the administrator that the services were rendered under an implied, if not an express, promise to pay for the same and the claimant should be permitted to introduce her proof to establish either an express or implied promise to pay for the services. Johnson v. Hannon, 211 Miss. 207, 51 So. 2d 283, 1951 Miss. LEXIS 350 (Miss. 1951).

A claim for "personal services" is too broad and indefinite; the statement of such a claim must specify the nature and character of the services rendered and that they were rendered pursuant to a contract with the decedent during his lifetime, either express or implied, that the services were to be compensated for. Johnson v. Odom, 202 Miss. 213, 31 So. 2d 120, 1947 Miss. LEXIS 261 (Miss. 1947).

Omission of the middle name or initial of the decedent does not invalidate a claim presented for probate against an estate. Boggan v. Scruggs, 200 Miss. 747, 29 So. 2d 86, 1947 Miss. LEXIS 358 (Miss. 1947), overruled, Talbert v. Ellzey, 203 Miss. 612, 35 So. 2d 628, 1948 Miss. LEXIS 313 (Miss. 1948).

A form of claim merely stating that it is in account with the named decedent, setting forth the items and signed at the end is not defective as failing to disclose whether the debt claimed is due from or to the decedent's estate, and if from, to whom. Boggan v. Scruggs, 200 Miss. 747, 29 So. 2d 86, 1947 Miss. LEXIS 358 (Miss. 1947), overruled, Talbert v. Ellzey, 203 Miss. 612, 35 So. 2d 628, 1948 Miss. LEXIS 313 (Miss. 1948).

Certified copies of petitions in suit against foreign administrator in foreign state with statutory affidavits attached held sufficient statement of claim against estate. Voyles v. Robinson, 151 Miss. 585, 118 So. 420, 1928 Miss. LEXIS 338 (Miss. 1928).

Defective description of some of the several items of a claim does not render the probate of the claim void. Gaulden v. Ramsey, 123 Miss. 1, 85 So. 109, 1920 Miss. LEXIS 1 (Miss. 1920).

"To care and attention including board, lodging . . . and service for 3 years prior to the death of said Mrs. O. D. Graves, and being from April 20, 1913, to April 20, 1916," properly states claim. Gaulden v. Ramsey, 123 Miss. 1, 85 So. 109, 1920 Miss. LEXIS 1 (Miss. 1920).

Where purchaser of claims did not itemize them for probate, but listed each, giving amount and name of original creditor, this was not sufficient. Rogers v. Rosenstock, 117 Miss. 144, 77 So. 958, 1918 Miss. LEXIS 158 (Miss. 1918).

The itemized account need not show days of month of doctor's visits; due date of each item held to be first day of month in which charged. Duffy v. Kilroe, 116 Miss. 7, 76 So. 681, 1917 Miss. LEXIS 281 (Miss. 1917).

Statement of claim sufficiently signed where creditor signed affidavit attached thereto. Bankston v. Coopwood, 99 Miss. 511, 55 So. 48, 1911 Miss. LEXIS 221 (Miss. 1911).

A claim for professional services not based upon an itemized account is sufficiently stated for probate if in writing and if it specifies a definite sum as due "for legal advice and services rendered" to deceased. Foster v. Shaffer, 84 Miss. 197, 36 So. 243, 1904 Miss. LEXIS 24 (Miss. 1904).

6. Clerk's certificate.

Defendants' promissory notes were properly probated where the clerk's certificate showed that each note was a true and correct copy of the original note and that after each original note was filed and numbered it was withdrawn and the copy substituted; the fact that the clerk did not mark on any of the original notes the word "filed" and did not number the original notes did not invalidate the probation of the notes. Estate of Wilson v. National Bank of Commerce, 364 So. 2d 1117, 1978 Miss. LEXIS 2239 (Miss. 1978).

Where a creditor's claim against a decedent's estate is filed with the chancery clerk within the statutory six-month period, it is the purpose of the 1934 amendment to this section [Code 1942, § 568] to allow the clerk to enter a nunc pro tunc indorsement on the claim after the expiration of the statutory period. Ethridge v. Estate of Paul, 196 So. 2d 530, 1967 Miss. LEXIS 1492 (Miss. 1967).

Bill against chancery clerk and his surety for failure to attach certificate to claim showing it was probated, allowed, and registered, because of which failure claim was disallowed, held not demurrable since claimant would at least be entitled to nominal damages. Poyner v. Gilmore, 171 Miss. 859, 158 So. 922, 1935 Miss. LEXIS 25 (Miss. 1935).

Claim rendered invalid by failure of clerk to make any endorsement showing probate, registration and allowance. Stevens v. D. R. Dunlap Mercantile Co., 108 Miss. 690, 67 So. 160, 1914 Miss. LEXIS 260 (Miss. 1914).

Statute requiring endorsement of clerk is mandatory, but court within time period before claim is barred, where clerk's failure was due to ignorance of duty, may enter order nunc pro tunc authorizing clerk to approve and allow claim. Stevens v. D. R. Dunlap Mercantile Co., 108 Miss. 690, 67 So. 160, 1914 Miss. LEXIS 260 (Miss. 1914).

Clerk's certificate not invalidated by omission of word "probated" where shown statute complied with by claimant. Davis v. Blumenberg, 107 Miss. 432, 65 So. 503, 1914 Miss. LEXIS 102 (Miss. 1914).

7. Withdrawal of instruments.

Defendants' promissory notes were properly probated where the clerk's certificate showed that each note was a true and correct copy of the original note and that after each original note was filed and numbered it was withdrawn and the copy substituted; the fact that the clerk did not mark on any of the original notes the word "filed" and did not number the original notes did not invalidate the probation of the notes. Estate of Wilson v. National Bank of Commerce, 364 So. 2d 1117, 1978 Miss. LEXIS 2239 (Miss. 1978).

Clerk keeps original note probated against estate until creditor requests withdrawal thereof, and clerk's statutory obligation to make certified copy to be retained by him arises only on claimant's request to withdraw original and exists only while original yet remains in clerk's hands. Merchants' & Mfrs' Bank v. Busby, 172 Miss. 394, 160 So. 577, 1935 Miss. LEXIS 154 (Miss. 1935).

Clerk held not liable for failure to certify copies of notes filed against estate, resulting in disallowance of claim, in absence of allegations that he had assured creditor at time of withdrawal of originals that certified copies had been made and filed, or promised to make and file certified copies after withdrawal. Merchants' & Mfrs' Bank v. Busby, 172 Miss. 394, 160 So. 577, 1935 Miss. LEXIS 154 (Miss. 1935).

Probate of note withdrawn by claimant held void for absence of clerk's seal on certificate on copy of note, although certificate of probate was sealed. King v. Jones, 171 Miss. 886, 158 So. 457, 158 So. 796, 1935 Miss. LEXIS 19 (Miss. 1935).

Statute requires creditor probating claim against estate on deceased's note, in order to withdraw original note from clerk's office, to furnish for administrator, heirs, and other parties in interest full and true copy made or verified by clerk, accompanied by clerk's certificate, indorsed on copy or appended thereto, which certificate and copy must both remain on file among papers in clerk's office. Jordan v. Love, 171 Miss. 523, 157 So. 877, 1934 Miss. LEXIS 262 (Miss. 1934).

Where clerk certified copy of deceased's note filed for probate and sent certificate and original note back to claimant, who filed them away without observing irregularity until after period for probation had expired, claim was not allowable, since statute was not complied with. Jordan v. Love, 171 Miss. 523, 157 So. 877, 1934 Miss. LEXIS 262 (Miss. 1934).

Statute regulating probate of claims and authorizing withdrawal of original note where clerk retains copy, held to authorize withdrawal of original attached affidavit where clerk retained a certified copy. Deposit Guaranty Bank & Trust Co. v. Jordan's Estate, 171 Miss. 332, 157 So. 876, 1934 Miss. LEXIS 260 (Miss. 1934).

Statute requires clerk of court, when original instruments executed by decedent are withdrawn from files, to make and retain certified copies. Merchants & Mfrs. Bank v. Fox, 165 Miss. 833, 147 So. 789, 1933 Miss. LEXIS 313 (Miss. 1933).

Clerk's certificate on copies retained when original instruments executed by decedent are withdrawn from files, must be under hand and seal of clerk and must show clerk has had originals placed before him and that copies retained are true copies. Merchants & Mfrs. Bank v. Fox, 165 Miss. 833, 147 So. 789, 1933 Miss. LEXIS 313 (Miss. 1933).

It is sufficient for clerk to indorse on copy retained of instrument executed by decedent and withdrawn from files that same is "true copy of original this day exhibited to me," dating certificate, signing same, and affixing thereto his official seal. Merchants & Mfrs. Bank v. Fox, 165 Miss. 833, 147 So. 789, 1933 Miss. LEXIS 313 (Miss. 1933).

Where original note of decedent is withdrawn from files, all indorsements and credits must be shown by copy retained and certificate. Merchants & Mfrs. Bank v. Fox, 165 Miss. 833, 147 So. 789, 1933 Miss. LEXIS 313 (Miss. 1933).

8. Defective probate.

A claim upon a note is properly disallowed where the original is not filed. Stewart v. Estate of Williamson, 243 Miss. 450, 138 So. 2d 742, 1962 Miss. LEXIS 361 (Miss. 1962).

Claim by deceased's brother for a doctor's bill incurred by the decedent in his last illness, there being no evidence that the brother paid the claim at the request of the deceased, was properly refused since under the law such a claim should be separately probated on the affidavit of the original creditor. Martin v. De Jarnette, 185 Miss. 76, 187 So. 202, 1939 Miss. LEXIS 123 (Miss. 1939).

Holder of note against estate must probate original note or account for loss; claimant on open account must itemize as to dates and sums furnished. Levy v. Merchants' Bank & Trust Co., 124 Miss. 325, 86 So. 807, 1920 Miss. LEXIS 512 (Miss. 1920).

Decree disallowing claim not probated according to law affirmed where record does not contain note or account attempted to be probated. Horne v. McAlpin, 101 Miss. 129, 57 So. 420, 1911 Miss. LEXIS 107 (Miss. 1911).

In suit against executor for debt due by testator, proof of correctness of claim properly rejected where not signed by the creditor and no affidavit attached. Walker v. Nelson, 87 Miss. 268, 39 So. 809, 1905 Miss. LEXIS 139 (Miss. 1905).

9. Affidavit.

Where the timely affidavit filed by the creditor designated as the credit account the decedent's business rather than the decedent himself, and it neither presented written evidence of the claim nor an itemized account thereof, it provided no information to the administrator of the estate from which he could reasonably act in either allowing or disallowing the claim, and the trial court properly refused to allow the creditor to amend his complaint after the expiration of 6 months. Stuart C. Irby Co. v. Patton, 301 So. 2d 845, 1974 Miss. LEXIS 1665 (Miss. 1974).

Where statute of limitations would not run against claim of brother for services and necessaries furnished to his insane sister with expectation of repayment, until her death, it is not required that the affidavit state the time when decedent died, since the death is already established by the record giving jurisdiction of the case to the chancery court. Talbert v. Ellzey, 203 Miss. 612, 35 So. 2d 628, 1948 Miss. LEXIS 313 (Miss. 1948).

A claim based on a loan to the deceased to buy hotel bonds which were to be a gift to the creditor, evidenced by a check allegedly signed by the creditor, was not properly probated as required hereunder, where there was a variance in the initials of the name of the creditor as it appeared on the statement of accounts, check and affidavit in support of the accounts, with no showing that the various names described the same person. Strange v. Strange, 189 Miss. 349, 197 So. 830, 1940 Miss. LEXIS 126 (Miss. 1940).

Affidavit by creditor's agent amounts to no affidavit at all. Persons v. Griffin, 112 Miss. 643, 73 So. 624, 1916 Miss. LEXIS 159 (Miss. 1916).

Affidavit failing to allege that claim "is not usurious" is insufficient. Cudahy Packing Co. v. Miller's Estate, 103 Miss. 435, 60 So. 574, 1912 Miss. LEXIS 190 (Miss. 1912).

Affidavit by creditor's husband as her agent, fatally defective as statute requires that it be by creditor. Saunders v. Stephenson, 94 Miss. 676, 47 So. 783, 1909 Miss. LEXIS 328 (Miss. 1909).

The clerk had no jurisdiction to allow and register a claim where the probate failed to conform to the statute in the following particulars: The affidavit did not after the word "correct" incorporate the words "and owing from the deceased," and did not contain the words "that it is not usurious" nor the words "and that neither the affiant nor any person has received payment." Cheairs v. Cheairs, 81 Miss. 662, 33 So. 414, 1902 Miss. LEXIS 180 (Miss. 1902).

10. Payment of claims.

Will provision directing probate of claims against decedent's estate and excepting "secured debts not due" cannot defeat obligation of the estate to pay a probated secured claim. Campbell v. Cason, 206 Miss. 420, 40 So. 2d 258, 1949 Miss. LEXIS 271 (Miss. 1949).

An administrator has no right to pay a probated claim for services rendered to the deceased in his lifetime, in the absence of either an express or implied promise on the part of the decedent to pay for the same. Johnson v. Odom, 202 Miss. 213, 31 So. 2d 120, 1947 Miss. LEXIS 261 (Miss. 1947).

Claims for services rendered by intestate's next of kin in looking after intestate, were properly disallowed where there was no promise, agreement or circumstances from which it could be reasonably inferred that the intestate expected to pay, or that such next of kin expected to receive pay, for such services. Wells v. Brooks, 199 Miss. 327, 24 So. 2d 533, 1946 Miss. LEXIS 201 (Miss. 1946).

Claim for services rendered by husband of daughter of intestate's nephew in assisting the nephew in managing the intestate's farm, was properly disallowed where there was no circumstances justifying any assent, express or implied, on the part of the intestate to pay the husband, and where he failed to show that he rendered any service of substantial benefit. Wells v. Brooks, 199 Miss. 327, 24 So. 2d 533, 1946 Miss. LEXIS 201 (Miss. 1946).

Husband of daughter of deceased's nephew by half blood was entitled to fair and adequate compensation on a quantum meruit basis for services rendered in managing deceased's farm, where such services were performed in expectation that deceased would carry out unenforceable promise to leave her property to the daughter if husband performed such services. Wells v. Brooks, 199 Miss. 327, 24 So. 2d 533, 1946 Miss. LEXIS 201 (Miss. 1946).

Claim against testator's estate, which purported to be itemized account or statement of claim in writing, which charged estate with purchase of note on which there was balance due, would be disallowed, where evidence clearly disclosed that there was no sale of note by claimant to testator, but that testator agreed to collect note for claimant, pay certain amount on debt of testator's son to testator and turn over balance to claimant, and that testator merely became claimant's agent or trustee for collection of note. First Columbus Nat'l Bank v. Holesapple-Dillman, 174 Miss. 234, 164 So. 232, 1935 Miss. LEXIS 73 (Miss. 1935).

Administrator is without authority to pay claim not presented as provided by this section [Code 1942, § 568].A. A. Lehman & Co. v. Powe, 95 Miss. 446, 49 So. 622, 1909 Miss. LEXIS 286 (Miss. 1909).

Decree directing distribution among heirs does not affect right to payment of probated claim; fact that claimant is also administrator who has filed its final account is immaterial. Oliver v. Smith, 94 Miss. 879, 49 So. 1, 1909 Miss. LEXIS 364 (Miss. 1909).

11. Unprobated claims.

Services rendered under an oral agreement between a father and daughter whereby the former agreed to leave the daughter her home in consideration of her living with him and taking care of him, constituted an unliquidated claim which could not be probated as required by this section [Code 1942, § 568], and being a liability in the strictest sense of the word, the daughter was not barred because the claim was not probated but was entitled to recover the reasonable value of her services. Stephens v. Duckworth, 188 Miss. 626, 196 So. 219, 1940 Miss. LEXIS 66 (Miss. 1940).

The court has no power upon ex parte petitions to authorize a payment of an unprobated claim. Townsend v. Beavers, 185 Miss. 312, 188 So. 1, 1939 Miss. LEXIS 154 (Miss. 1939).

While heirs and distributees, so far as they are each concerned, may consent to the payment by the administrator of unprobated debts against the estate, and after such consent and the payment in pursuance thereof will, in the absence of fraud or misrepresentation, be precluded from any attempt on their part to charge the administrator therewith, this does not bind or affect the interests of those who did not so consent. Townsend v. Beavers, 185 Miss. 312, 188 So. 1, 1939 Miss. LEXIS 154 (Miss. 1939).

Payment of promissory notes which were not probated as required by this section [Code 1942, § 568] could not be surcharged against the administrator as to those distributees of the estate who consented thereto, although such consent was not binding on heirs and devisees who did not consent to such payment. Townsend v. Beavers, 185 Miss. 312, 188 So. 1, 1939 Miss. LEXIS 154 (Miss. 1939).

Court cannot assume justice or correctness of claim not duly probated. Persons v. Griffin, 112 Miss. 643, 73 So. 624, 1916 Miss. LEXIS 159 (Miss. 1916).

Refusal to permit administrator to file plea, after close of evidence, setting up failure to probate within time fixed by statute, was erroneous. Johnson v. Success Brick Machinery Co., 93 Miss. 169, 46 So. 957, 1908 Miss. LEXIS 117 (Miss. 1908).

Setoff cannot be based on unprobated claim. Cohn v. Carter, 92 Miss. 627, 46 So. 60, 1908 Miss. LEXIS 202 (Miss. 1908).

12. Limitations.

The rule that facts which prevented the running of the statute of limitations against a probated claim should appear in some form on probate thereof and cannot be made to appear for the first time by evidence offered when the claim is under consideration in administration of deceased's estate, does not apply to services and necessaries furnished by a brother to his insane sister, since limitations in such case does not begin to run until her death. Talbert v. Ellzey, 203 Miss. 612, 35 So. 2d 628, 1948 Miss. LEXIS 313 (Miss. 1948).

Motion of claimant, who after expiration of six months for probate, moved that clerk be allowed to make proper certificates of true copies of notes withdrawn and to sign probate and allowance, held properly overruled. Merchants & Mfrs. Bank v. Fox, 165 Miss. 833, 147 So. 789, 1933 Miss. LEXIS 313 (Miss. 1933).

Estate of nonresident within state administered as though there were no other administration, and creditor may probate claim barred in other state but not in this state. Buckingham Hotel Co. v. Kimberly, 138 Miss. 445, 103 So. 213, 1925 Miss. LEXIS 62 (Miss. 1925).

Full faith and credit clause held not to require treating order of dismissal in another state of probate claim for late filing as bar to claim in this state. Buckingham Hotel Co. v. Kimberly, 138 Miss. 445, 103 So. 213, 1925 Miss. LEXIS 62 (Miss. 1925).

No action can be maintained on note not probated within time fixed. Johnson v. Success Brick Machinery Co., 93 Miss. 169, 46 So. 957, 1908 Miss. LEXIS 117 (Miss. 1908).

13. Written evidence.

In a case in which appellant, along with her children, filed claims against her ex-husband's estate for child support arrears, other unpaid support obligations, and for life insurance proceeds, appellant's presentation of the divorce decree, the property settlement agreement, and other various documents was sufficient to satisfy the requirements of Miss. Code Ann. § 91-7-14. To the extent the chancellor dismissed appellant's claims on the merits, such action was improper, as the merits were not before the chancellor to decide. Strickland v. Estate of Broome, 179 So. 3d 1088, 2015 Miss. LEXIS 604 (Miss. 2015).

In a probate proceeding involving a claim based upon an oral contract between the claimant and the decedent whereby the claimant would lend the decedent $11,000 and the decedent would leave a bequest of certain real property to the claimant, the chancellor properly admitted into evidence the claimant's cancelled check and the document reporting to be the defective holographic will of the decedent, neither of which had been attached as exhibits to the claim, where the claim itself was based upon the oral contract and the exhibits were merely introduced as evidence in support of the claim. Estate of McKellar v. Brown, 404 So. 2d 550, 1981 Miss. LEXIS 2229 (Miss. 1981).

The chancellor properly dismissed an amended probate of claim where the alleged written contract between the decedent and the claimant did not in and of itself sufficiently state a claim against the estate and where the claimant failed to allege and prove compliance with the various conditions of the agreement. French v. Druetta, 399 So. 2d 1327, 1981 Miss. LEXIS 1966 (Miss. 1981).

Where the timely affidavit filed by the creditor designated as the credit account the decedent's business rather than the decedent himself, and it neither presented written evidence of the claim nor an itemized account thereof, it provided no information to the administrator of the estate from which he could reasonably act in either allowing or disallowing the claim, and the trial court properly refused to allow the creditor to amend his complaint after the expiration of 6 months. Stuart C. Irby Co. v. Patton, 301 So. 2d 845, 1974 Miss. LEXIS 1665 (Miss. 1974).

Where the respective proofs of two notes presented as claim against an estate recited that the claim was "annexed" and that the original was presented therewith, and described the claim with great particularity and with such accuracy that there could be no mistake as to what claims were referred to, there was a sufficient compliance with this section [Code 1942, § 568], notwithstanding that the proofs were not physically attached to the claims, this section being mandatory as to substance but not as to letter. Fidelity Mut. Life Ins. Co. v. Goldstein, 187 Miss. 285, 192 So. 584, 1940 Miss. LEXIS 206 (Miss. 1940).

Claims, giving claimant's name and stating that specified amount is due for clearing land, should be allowed where correctness proved by evidence of amount of work and price per acre is shown by written agreement signed by deceased. Fairley v. Fairley, 120 Miss. 400, 82 So. 267 (Miss. 1919).

Joint and several note of claimant and deceased husband with attached receipt of payment in full by claimant, was written evidence on its face of her claim for one-half the payment. Wells v. McCollough, 113 Miss. 401, 74 So. 289, 1917 Miss. LEXIS 115 (Miss. 1917).

It was error to disallow claim of creditor who lost original of his claim after probate, but filed copies thereof on day set for filing. Keiffer Bros. Co. v. Bank of Commerce, 105 Miss. 662, 63 So. 189, 1913 Miss. LEXIS 246 (Miss. 1913).

Claim properly disallowed where claimant filed only copy of receipt signed by decedent, evidencing his claim. McMahon v. Foy, 104 Miss. 309, 61 So. 421, 1913 Miss. LEXIS 38 (Miss. 1913).

RESEARCH REFERENCES

ALR.

Appealability of probate orders allowing or disallowing claims against estate. 84 A.L.R.4th 269.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 628.

19 Am. Jur. Trials, Actions by or against a decedent's estate, § 1 et seq.

Law Reviews.

Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March, 1982.

§ 91-7-151. Claims to be registered in ninety days or barred; amendment of affidavits.

All claims against the estate of deceased persons, whether due or not, shall be registered, probated and allowed in the court in which the letters testamentary or of administration were granted within ninety (90) days after the first publication of notice to creditors to present their claim. Otherwise, the same shall be barred and a suit shall not be maintained thereon in any court, even though the existence of the claim may have been known to the executor or administrator. Where the affidavit is made in good faith and the claim is registered, probated and allowed by the clerk but the affidavit is defective or insufficient, the court may allow the affidavit to be amended so as to conform to the requirements of the statute, at any time before the estate is finally settled; whereupon the probate shall be as effective and the claim as valid against the estate as if the affidavit had been correct and sufficient in the first instance.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 20 (5); 1857, ch. 60, art. 83; 1871, § 1141; 1880, § 2028; 1892, § 1933; 1906, § 2107; Hemingway's 1917, § 1775; 1930, § 1672; 1942, § 569; Laws, 1926, ch. 157; Laws, 1975, ch. 373, § 5, eff from and after January 1, 1976.

JUDICIAL DECISIONS

ANALYSIS

1. In general; applicability.
2. —Applicability to particular circumstances.
3. Timeliness.
4. Waiver of bar.
5. Accrual of claim before or after death.
6. Claims on suits brought before or after death.
7. Defective notice.
8. Amendment of claim or affidavit.

1. In general; applicability.

Section 91-7-151 applies only to monetary claims against an estate. Allen v. Mayer, 587 So. 2d 255, 1991 Miss. LEXIS 673 (Miss. 1991).

Executrix was properly surcharged for payment of decedent's debts which had not been probated, registered, or allowed. Harper v. Harper, 491 So. 2d 189, 1986 Miss. LEXIS 2508 (Miss. 1986).

The statute is not applicable to a situation where a party denies that it is indebted to an estate and raises no claim against the estate. Bible Ministry Asso. v. Merritt, 391 So. 2d 641, 1980 Miss. LEXIS 2166 (Miss. 1980).

The six months statute of limitations as to claims of creditors is irrelevant to an action against the personal representative and heirs of a decedent seeking adjudication of the existence of a partnership and an accounting of the partnership property. Kelly v. Windham, 204 So. 2d 477, 1967 Miss. LEXIS 1206 (Miss. 1967).

An unliquidated claim is not probatable. Powell v. Buchanan, 245 Miss. 4, 147 So. 2d 110, 1962 Miss. LEXIS 526 (Miss. 1962).

This section [Code 1942, § 569] operates to bar a claim for services, notwithstanding a dispute as to rate of compensation. Love v. Estate of Strong, 234 Miss. 869, 108 So. 2d 215, 1959 Miss. LEXIS 561 (Miss. 1959).

This section [Code 1942, § 569] applies only to contractual claims and not to those in tort. Mossler Acceptance Co. v. Moore, 218 Miss. 757, 67 So. 2d 868, 1953 Miss. LEXIS 601 (Miss. 1953); Hancock v. Pyle, 191 Miss. 546, 3 So. 2d 851, 1941 Miss. LEXIS 175 (Miss. 1941).

The term "claim" in statutes relating to claims against estates includes not only debts already due, but unmatured debts, but it applies only to specific money demands due or to become due and not to inchoate and contingent claims. Reedy v. Alexander, 202 Miss. 80, 30 So. 2d 599, 1947 Miss. LEXIS 244 (Miss. 1947).

A claim against the estate of a deceased person is a demand of a pecuniary nature, which could have been enforced against the decedent during his lifetime; the term does not include a claim to the proceeds of the sale of personal property of an estate. Reedy v. Alexander, 202 Miss. 80, 30 So. 2d 599, 1947 Miss. LEXIS 244 (Miss. 1947).

That widow's petition, claiming the proceeds of certain personalty sold by order of the court as her own rather than that of the estate, had the oath of probate attached to it, and the clerk certified it had been probated, registered and allowed, did not convert it to a probatable or probated claim. Reedy v. Alexander, 202 Miss. 80, 30 So. 2d 599, 1947 Miss. LEXIS 244 (Miss. 1947).

The statute of limitations does not bar the claim of an administrator against the estate for an individual debt duly probated and not barred at the time of his appointment. Oliver v. Smith, 94 Miss. 879, 49 So. 1, 1909 Miss. LEXIS 364 (Miss. 1909).

Claim for damages is not within this section [Code 1942, § 569]; the section refers to contractual claims only. Feld v. Borodofski, 87 Miss. 727, 40 So. 816, 1905 Miss. LEXIS 216 (Miss. 1905).

This section [Code 1942, § 569] has no application to a surviving partner administering partnership assets. Lance v. Calhoun, 85 Miss. 375, 37 So. 1014, 1904 Miss. LEXIS 171 (Miss. 1904).

2. —Applicability to particular circumstances.

Claim for reimbursement of funeral expenses was not untimely under this section because the expenses were not required to be probated; such claims were considered to be a part of the cost of the administration of the estate, and the requirement to probate a claim applied to obligations incurred by a decedent during his lifetime. In re Estate of Whitley v. Love, 129 So. 3d 260, 2013 Miss. App. LEXIS 789 (Miss. Ct. App. 2013).

Clearly, more than 90 days after the first notice to creditors had elapsed when plaintiff (a surviving child), filed his claim against the estate, claiming he was entitled to all the insurance proceeds per the decedent's property settlement with a former wife. However, when the decedent died, plaintiff was a minor, and according to the terms of the decedent's will, the decedent's second and surviving spouse had been appointed testamentary guardian of plaintiff's person and estate; defendant was in a fiduciary relationship with plaintiff, and in that capacity, she not only had an obligation to initiate any and all claims which plaintiff may have had, but she had an obligation to initiate them timely, and therefore, the chancery court erred in granting defendant's Miss. R. Civ. P. 12(b) motion since a constructive trust was possibly at issue. Thornhill v. Thornhill, 905 So. 2d 747, 2004 Miss. App. LEXIS 1083 (Miss. Ct. App. 2004).

Statute was inapplicable to a claim for furniture, since the claim was not pecuniary in nature and was therefore not a probatable claim within the meaning of the statute. Allen v. Mayer, 587 So. 2d 255, 1991 Miss. LEXIS 673 (Miss. 1991).

Since the liability of the deceased guarantor of a promissory note was contingent, and would possibly never occur, § 91-7-151 did not require that it be filed for probate within a period of 90 days following first notice to creditors, and thus the trial court erred in dismissing the lender bank's suit against the guarantor's estate. Peoples Bank of Mendenhall v. Wyatt, 441 So. 2d 117, 1983 Miss. LEXIS 3018 (Miss. 1983).

In an action seeking to compel a perfect inventory, void certain conveyances, partition property, and establish a claim against an estate, §§ 91-7-149, 91-7-251 had no application and petitioner's claim was improperly dismissed as untimely, where the claim was not for a specific money demand due or to become due but rather was an inchoate and contingent claim involving the ownership by co-tenancy of specific property. Maxwell v. Yuncker, 419 So. 2d 580, 1982 Miss. LEXIS 2165 (Miss. 1982).

A creditor's claim against decedent's estate for default on an unsecured note assumed by decedent was barred by this section's 90 day statute of limitations, where the balance due under the note was not an inchoate or contingent claim excepted from the statute, but was a claim enforceable against decedent during his lifetime. Barrett v. Moffitt, 381 So. 2d 624, 1980 Miss. LEXIS 1924 (Miss. 1980).

The claim of a bank, based on an agreement between the decedent and the managing director of the bank for services to be rendered the decedent in consideration of an assignment of 30 percent of the decedent's interest in another's estate, was not a joint, undivided and inchoate interest or a contingent unliquidated claim not subject to probate provisions and the time limitation with which to file the claim against an estate, but was instead a claim for personal services which was barred by the bank's failure to file its claim until 6 months had elapsed from the first publication notice to creditors by the administrator. Vacek v. Hoerner-Bank of West Berlin, 258 So. 2d 793, 1972 Miss. LEXIS 1513 (Miss. 1972).

Where payee failed to timely probate a claim on a note of deceased, and was barred from asserting claim on the note as an unsecured creditor, he was entitled to recovery of the salvage value of the destroyed automobile which had been mortgaged to secure the note. Mossler Acceptance Co. v. Moore, 218 Miss. 757, 67 So. 2d 868, 1953 Miss. LEXIS 601 (Miss. 1953).

Purchaser's claim against decedent's estate for purchase price of royalty interest in oil and gas lease because of breach of warranty based on decedent's prior conveyance of his interest, there having been no production of oil and gas under the lease prior to decedent's death, was a probatable claim against decedent's estate which was barred for failure to probate same within the period prescribed by this section [Code 1942, § 569]. Dale v. Hickman, 207 Miss. 606, 42 So. 2d 810, 1949 Miss. LEXIS 373 (Miss. 1949).

Claims for the proceeds of timber sold from land purchased at an invalid foreclosure sale, and rents received by the purchaser, are not required to be probated within six months, the claims coming within the purview of such requirement being such as, if paid by the executor or administrator, would prima facie entitle him to credit therefor. Hancock v. Pyle, 191 Miss. 546, 3 So. 2d 851, 1941 Miss. LEXIS 175 (Miss. 1941).

Where executor failed to probate claim against estate secured by mortgage, devisee was not entitled to have land exonerated and claim paid out of general assets. Howell v. Ott, 182 Miss. 252, 180 So. 52, 181 So. 740, 1938 Miss. LEXIS 139 (Miss. 1938), limited, Kent v. McCaslin, 238 Miss. 129, 117 So. 2d 804, 1960 Miss. LEXIS 387 (Miss. 1960).

Unliquidated claim against negligent bank director is not a claim for probate against his estate. Boyd v. Applewhite, 121 Miss. 879, 84 So. 16, 1920 Miss. LEXIS 128 (Miss. 1920).

The limitation provided under this section [Code 1942, § 569] does not apply where a will creates an express trust for the payment of debts and the executor follows the directions of the will as provided in Code 1942, § 518. Gordon v. McDougall, 84 Miss. 715, 37 So. 298, 1904 Miss. LEXIS 96 (Miss. 1904).

The liability of a surety on a guardian's bond is not a probatable claim against the estate of a deceased surety and is not barred by any statute of limitations relating to the probate of claims. Savings Bldg. & Loan Ass'n v. Tart, 81 Miss. 276, 32 So. 115, 1902 Miss. LEXIS 103 (Miss. 1902).

3. Timeliness.

Because the executrix failed in the executrix's statutory duty to provide notice to any creditors regarding the probate of the decedent's estate, the filing period for probate claims did not expire as the executrix failed to provide the required statutory notice to trigger the running of the filing period. Avakian v. Wilmington Trust N.A. (In re Estate of Avakian), 231 So. 3d 208, 2017 Miss. App. LEXIS 201 (Miss. Ct. App.), cert. denied, 229 So. 3d 122, 2017 Miss. LEXIS 492 (Miss. 2017).

A claim presented for probate on December 27, 1946, was not presented within the six-months period where the first notice to creditors was published June 26, 1946. Paine Plumbing & Supply Co. v. McMurtray's Estate, 203 Miss. 334, 34 So. 2d 676, 1948 Miss. LEXIS 274 (Miss. 1948).

Where it appeared that on the death of one partner, the surviving partner had agreed to hold the shares of two of the decedent's heirs as an active trust for their benefit until demand was made by them for payment of the principal, that all of the parties to the agreement had died and the estate of the surviving partner had been administered, with due notice given to creditors, a bill filed by heirs of the first deceased partner, more than three and one-half years after the death of the surviving partner and after the estate had been administered and the personal property distributed, and without a claim having been presented to the administratrix of his estate, to fix and impose a money decree upon the administratrix and the heirs at law of the surviving partner, was barred by the nonclaim statute, and also by the statute relating to limitation of actions on unwritten contracts. Whitaker v. Davenport, 193 Miss. 523, 10 So. 2d 202, 1942 Miss. LEXIS 135 (Miss. 1942).

4. Waiver of bar.

The bar of the statute cannot be waived by the conduct of the administrator, however misleading or designing. Harkness v. Kansas C., M. & B. R. Co., 33 So. 77 (Miss. 1902).

5. Accrual of claim before or after death.

Executrix would be surcharged for the amount the testamentary trust property was damaged or put in jeopardy due to her mortgaging of estate's unencumbered real property as security for debt incurred by testator which was never probated. Harper v. Harper, 491 So. 2d 189, 1986 Miss. LEXIS 2508 (Miss. 1986).

A vendor's election to probate and register a promissory note executed in conjunction with a deed of trust against the purchaser's estate, which was not pursued, was lost at the end of the 90 day limitation period of § 91-7-151; however, that section, as qualified by § 91-7-167, did not bar the vendor's election to pursue the trust or lien establishment against the specific real estate, which arose at the time the deed of trust was mistakenly cancelled by the bank. First Nat'l Bank v. Huff, 441 So. 2d 1317, 1983 Miss. LEXIS 3003 (Miss. 1983).

Where statutory liability of bank stockholder had accrued prior to stockholder's death but claim had not been probated, suit to recover such statutory liability instituted after expiration of statutory period for presenting claims held barred. Gray v. Love, 173 Miss. 390, 161 So. 679, 1935 Miss. LEXIS 222 (Miss. 1935).

Claim against bank stockholder for statutory liability having accrued prior to stockholder's death, which occurred after bank became insolvent and closed, was required to be probated the same as other unsecured debts. Gray v. Love, 173 Miss. 390, 161 So. 679, 1935 Miss. LEXIS 222 (Miss. 1935).

Compliance with statute providing that all claims against estate of deceased persons, whether due or not shall be registered, probated, and allowed in court in which letters testamentary or of administration were granted within six months after first publication of notice to creditors, is mandatory. Gray v. Love, 173 Miss. 390, 161 So. 679, 1935 Miss. LEXIS 222 (Miss. 1935).

A decedent's estate is not liable for an assessment against the decedent as a stockholder in a failed national bank, made in the decedent's lifetime, where a claim therefor was not presented within the time limited by statute. Mann v. Kleisdorff, 16 F.2d 997, 1927 U.S. App. LEXIS 3682 (5th Cir. Miss. 1927).

Liability of endorser of note as collateral security for another, not having matured at endorser's death, need not be probated as claim. Sledge & Norfleet Co. v. Dye, 140 Miss. 779, 106 So. 519, 1926 Miss. LEXIS 482 (Miss. 1926).

Claim against estate of deceased stockholder in bank, for double liability, is barred unless probated, where stockholder died after liability accrued. Board of Bank Examiners v. Grenada Bank, 135 Miss. 242, 99 So. 903, 1924 Miss. LEXIS 38 (Miss. 1924).

Claims maturing before decedent's death are barred, notwithstanding probate, by failure to sue thereon within four years and six months from grant of letters. Rogers v. Rosenstock, 117 Miss. 144, 77 So. 958, 1918 Miss. LEXIS 158 (Miss. 1918).

6. Claims on suits brought before or after death.

Law requiring claims to be probated within six months applies only to claims on which suit was not brought during decedent's lifetime. Henry v. W. T. Rawleigh Co., 152 Miss. 320, 120 So. 188, 1929 Miss. LEXIS 214 (Miss. 1929); Dillard & Coffin Co. v. Woollard, 124 Miss. 677, 87 So. 148, 1920 Miss. LEXIS 554 (Miss. 1920).

7. Defective notice.

The failure of the illegitimate children of a decedent to assert any claim in the decedent's estate until after the expiration of 90 days from the date of the first publication of notice to creditors did not bar their claim of heirship or wrongful action where the petition for letters of administration specifically named the illegitimate children as the natural children of the decedent and the administratrix failed to give them notice of the letters' issuance. Leflore v. Coleman, 521 So. 2d 863, 1988 Miss. LEXIS 170 (Miss. 1988).

Note executed by deceased held not barred by limitations, though over six months had elapsed since probate proceedings, where proceedings were had without proper notice because of omission of word "claims" in notice to creditors, and having no equivalent word since, though creditors may file and prove claims, whether statutory notice was given or not, they are not barred from right to probate unless notice conforms to statute. Bankston v. First Nat'l Bank & Trust Co., 177 Miss. 719, 171 So. 18, 1936 Miss. LEXIS 271 (Miss. 1936).

Administrator who invoked strict doctrine that probate of note was invalid because clerk's name and seal of court were not on copy of note held required to conform to strict compliance with statutory notice for probate proceedings. Bankston v. First Nat'l Bank & Trust Co., 177 Miss. 719, 171 So. 18, 1936 Miss. LEXIS 271 (Miss. 1936).

Where notice given to creditors is insufficient to set six months' statute in motion, creditors may amend probate of claims at any time before estate is closed, without court's leave. Bell v. Union & Planters' Bank & Trust Co., 158 Miss. 486, 130 So. 486, 1930 Miss. LEXIS 58 (Miss. 1930).

Claim not barred by failure to probate where notice not published for three consecutive weeks and no proof of publication made and filed with clerk. Boutwell v. Farmers' & Traders' Bank, 118 Miss. 50, 79 So. 1, 1918 Miss. LEXIS 48 (Miss. 1918).

8. Amendment of claim or affidavit.

The chancellor properly dismissed an amended probate of claim where the alleged written contract between the decedent and the claimant did not in and of itself sufficiently state a claim against the estate and where the claimant failed to allege and prove compliance with the various conditions of the agreement. French v. Druetta, 399 So. 2d 1327, 1981 Miss. LEXIS 1966 (Miss. 1981).

Where the timely affidavit filed by the creditor designated as the credit account the decedent's business rather than the decedent himself, and it neither presented written evidence of the claim nor an itemized account thereof, it provided no information to the administrator of the estate from which he could reasonably act in either allowing or disallowing the claim, and the trial court properly refused to allow the creditor to amend his complaint after the expiration of 6 months. Stuart C. Irby Co. v. Patton, 301 So. 2d 845, 1974 Miss. LEXIS 1665 (Miss. 1974).

Amendment of a claim after the time for filing is permissible unless it increases the amount of the claim, sets up a new cause of action, and materially changes the basis for the claim. Central Optical Merchandising Co. v. Estate of Lowe, 249 Miss. 61, 160 So. 2d 673, 1964 Miss. LEXIS 376 (Miss. 1964).

A claim for the unpaid balance on an open account for merchandise sold is a sufficient "itemized account" to be amended after the period for filing and to be applified by evidence where contested. Central Optical Merchandising Co. v. Estate of Lowe, 249 Miss. 61, 160 So. 2d 673, 1964 Miss. LEXIS 376 (Miss. 1964).

A claim for a balance due on account for merchandise sold is susceptible of amendment after expiration of the time for filing where it revealed debits and credits, alleged the balance, and was accompanied by photostats of invoices. Central Optical Merchandising Co. v. Estate of Lowe, 249 Miss. 61, 160 So. 2d 673, 1964 Miss. LEXIS 376 (Miss. 1964).

Where certain accounts against an estate were supported by affidavits which did not show the authority of the person signing, amended affidavits could be filed in each of the claims under this section [Code 1942, § 569]. Hughes v. Box, 224 Miss. 513, 81 So. 2d 242, 1955 Miss. LEXIS 516 (Miss. 1955).

Statute requiring court order authorizing amendment of affidavit to probated claims applies to amendments after expiration of six months' period. Bell v. Union & Planters' Bank & Trust Co., 158 Miss. 486, 130 So. 486, 1930 Miss. LEXIS 58 (Miss. 1930).

RESEARCH REFERENCES

ALR.

Amendment of claim against decedent's estate after expiration of time for filing claims. 56 A.L.R.2d 627.

Power and responsibility of executor or administrator to compromise claim against estate. 72 A.L.R.2d 243.

What constitutes rejection of claim against estate to commence running of statute of limitations applicable to rejected claims. 36 A.L.R.4th 684.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators §§ 1188, 1190, 1194.

CJS.

34 C.J.S., Executors and Administrators §§ 897-915.

§ 91-7-153. Registration of claim stops limitation.

The presentation of a claim, and having it probated and registered as required by law, shall stop the running of the general statute of limitations as to such claim, whether the estate be solvent or insolvent.

HISTORY: Codes, 1880, § 2062; 1892, § 1936; 1906, § 2110; Hemingway's 1917, § 1778; 1930, § 1673; 1942, § 570.

JUDICIAL DECISIONS

1. In general.

In a probate proceeding based upon an oral contract whereby the decedent promised to bequeath to the claimant a parcel of real property in return for a loan of $11,000, the cause of action for breach of the oral contract arising out of the failure of the will to be admitted to probate did not arise until the death of the decedent; therefore, where the claim for probate was filed within three months of the decedent's death, it was not barred by the three-year statute of limitations for all contracts set forth in § 15-1-29. Estate of McKellar v. Brown, 404 So. 2d 550, 1981 Miss. LEXIS 2229 (Miss. 1981).

Probated claim maturing before decedent's death barred, notwithstanding probate, by failure to sue thereon within four years and six months. Rogers v. Rosenstock, 117 Miss. 144, 77 So. 958, 1918 Miss. LEXIS 158 (Miss. 1918).

Presentation, probating, and registering claim stops running of general statute of limitations. Duffy v. Kilroe, 116 Miss. 7, 76 So. 681, 1917 Miss. LEXIS 281 (Miss. 1917).

Claim for medical services during deceased's last illness not barred until after 4 years and 6 months. Hardenstein v. Brien, 96 Miss. 493, 50 So. 979, 1910 Miss. LEXIS 152 (Miss. 1910).

RESEARCH REFERENCES

ALR.

What constitutes rejection of claim against estate to commence running of statute of limitations applicable to rejected claims. 36 A.L.R.4th 684.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators §§ 1188, 1190, 1194.

§ 91-7-155. Executor to pay probated, registered debts.

It shall be the duty of an executor or administrator to speedily pay the debts due by the estate out of the assets, if the estate be solvent; but he shall not pay any claim against the deceased unless the same has been probated, allowed, and registered.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (90); 1857, ch. 60, art. 81; 1871, §§ 1135, 1137; 1880, §§ 2026, 2027; 1892, § 1931; 1906, § 2105; Hemingway's 1917, § 1773; 1930, § 1674; 1942, § 571.

Cross References — Duty of legal representative of public officer who dies having public money in his hands to pay over the same, see § 25-1-67.

Payment of debts from escheated property, see §§ 89-11-17, 89-11-19.

Duty of administrator with the will annexed in regard to the payment of debts, see § 91-7-47.

Directions of will regarding payment of debts, see § 91-7-49.

Payment of debts by temporary administrator, see § 91-7-57.
Payment of debts prior to adjudication of insolvency of estate, see § 91-7-269.

JUDICIAL DECISIONS

1. In general.

Executrix would be surcharged for the amount the testamentary trust property was damaged or put in jeopardy due to her mortgaging of estate's unencumbered real property as security for debt incurred by testator which was never probated. Harper v. Harper, 491 So. 2d 189, 1986 Miss. LEXIS 2508 (Miss. 1986).

Executrix was properly surcharged for payment of decedent's debts which had not been probated, registered, or allowed. Harper v. Harper, 491 So. 2d 189, 1986 Miss. LEXIS 2508 (Miss. 1986).

This provision, being in derogation of the common-law rule, must be construed strictly. Riegelhaupt v. Ostroffsky, 237 Miss. 521, 115 So. 2d 331, 1959 Miss. LEXIS 499 (Miss. 1959).

Executor should be surcharged in his final account with sum which he paid out of funds of estate in settlement of just claims against estate which were required by law to be duly probated but which were not probated within six-month period after publication of first notice by executor to creditors of estate, as such expenditures are without authority of law unless claims had been probated. Oberst v. Mullens, 43 So. 2d 560 (Miss. 1949).

The court has no power upon ex parte petitions to authorize a payment of an unprobated debt or claim. Townsend v. Beavers, 185 Miss. 312, 188 So. 1, 1939 Miss. LEXIS 154 (Miss. 1939).

Administrator may pay claim for funeral expenses without probate. Gaulden v. Ramsey, 123 Miss. 1, 85 So. 109, 1920 Miss. LEXIS 1 (Miss. 1920).

Administrator without authority to pay claim not presented according to law. A. Lehman & Co. v. Powe, 95 Miss. 446, 49 So. 622, 1909 Miss. LEXIS 286 (Miss. 1909).

Setoff cannot be based on unprobated claim. Cohn v. Carter, 92 Miss. 627, 46 So. 60, 1908 Miss. LEXIS 202 (Miss. 1908).

RESEARCH REFERENCES

ALR.

Necessity of presenting spouse's claim under separation agreement to personal representative of other spouse's estate. 58 A.L.R.2d 1283.

Power and responsibility of executor or administrator to compromise claim against estate. 72 A.L.R.2d 243.

Garnishment against executor or administrator by creditor of estate. 60 A.L.R.3d 1301.

Appealability of probate orders allowing or disallowing claims against estate. 84 A.L.R.4th 269.

§ 91-7-157. Executor to pay taxes.

An executor or administrator shall pay all taxes that may be due on real and personal property belonging to the estate.

HISTORY: Codes, 1892, § 1930; 1906, § 2104; Hemingway's 1917, § 1772; 1930, § 1675; 1942, § 572.

Cross References — Income tax returns by fiduciaries, see § 27-7-35.
Time for filing income tax return, see § 27-7-41.
Tax upon settlement of fiduciary's account, see § 27-7-69.
Inheritance tax generally, see § 27-9-1 et seq.
Inheritance tax returns by executor, see § 27-9-23.

When inheritance tax shall be due, see § 27-9-27.
Lien for payment of estate taxes, see § 27-9-35.
Executor's personal liability for estate taxes, see § 27-9-37.
Tax upon settlement of executor's account, see § 27-9-41.
Payment of estate taxes as prerequisite to approval of final account, see § 27-9-41.
Enforcement of payment of taxes by tax collector, see § 27-41-11.

JUDICIAL DECISIONS

1. In general.

Executrix was properly surcharged with amount of interest and penalties paid from decedent's estate funds for the late filing of federal and state estate tax returns. Harper v. Harper, 491 So. 2d 189, 1986 Miss. LEXIS 2508 (Miss. 1986).

Unpaid taxes did not constitute valid defense to executrix's suit for specific performance against purchaser of realty sold under power of sale in will, since executrix has duty under this section [Code 1942, § 572] to pay the taxes and such obligation can be readily accounted for under the decree for specific performance. Davis v. Sturdivant, 197 Miss. 139, 19 So. 2d 499, 1944 Miss. LEXIS 284 (Miss. 1944).

In compliance with decree for specific performance of realty sold by executrix under power of sale in will, purchaser is entitled to deed free from lien for unpaid taxes. Davis v. Sturdivant, 197 Miss. 139, 19 So. 2d 499, 1944 Miss. LEXIS 284 (Miss. 1944).

Decision of umpire designated by will to settle disputes between executors, determining that taxes on real estate devised subject to the mortgage debt thereon were not payable by the estate but by the devisee, was not binding on the devisee, where the provision for action by such umpire was designed to bring about harmony between the executors, and such decision was contrary to the manifest intention of the testatrix. Eatherly v. Winn, 185 Miss. 742, 189 So. 99, 1939 Miss. LEXIS 184 (Miss. 1939).

Where the testatrix provided for the payment by her executors of all her just and legal debts, taxes on real estate accruing and due for the year prior to her death, were to be paid by her executors and were not chargeable against the devisee of such real estate devised to him subject to one-half of the mortgage debt thereon. Eatherly v. Winn, 185 Miss. 742, 189 So. 99, 1939 Miss. LEXIS 184 (Miss. 1939).

Administrator was properly permitted to take credit for payment of taxes on realty and merchandise. Crescent Furniture & Mattress Co. v. Morgan, 178 Miss. 824, 173 So. 290, 1937 Miss. LEXIS 211 (Miss. 1937).

Legatees and distributees not required to pay taxes. Tonnar v. Wade, 153 Miss. 722, 121 So. 156, 1929 Miss. LEXIS 56 (Miss. 1929).

Administrator on accounting was entitled to allowance for taxes paid on land of the estate. Davis v. Blumenberg, 107 Miss. 432, 65 So. 503, 1914 Miss. LEXIS 102 (Miss. 1914).

RESEARCH REFERENCES

ALR.

Liability of executor, administrator, trustee, or his counsel, for interest, penalty, or extra taxes assessed against estate because of tax law violations. 47 A.L.R.3d 507.

Liability of executor or administrator to estate because of overpaying or unnecessarily paying tax. 55 A.L.R.3d 785.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators §§ 581, 582.

CJS.

34 C.J.S., Executors and Administrators § 526.

§ 91-7-159. Agreement with commissioner of internal revenue to exercise discretion in distributing assets of estate or trust.

The executor, trustee, or other fiduciary having discretionary powers under a last will and testament or transfer in trust shall be authorized to enter into agreements with the commissioner of internal revenue of the United States of America and other taxing authorities to exercise the fiduciary's discretion so that the assets to be distributed in satisfaction of a bequest or transfer in trust will be selected in such a manner that cash and other properties distributed will have an aggregate fair market value representative of the pecuniary legatee's or transferee's proportionate share of the appreciation or depreciation in value to the date, or dates, of distribution of all property then available for distribution in satisfaction of such bequest or transfer. It is the purpose of this section to authorize such fiduciary to enter into any agreement that may be necessary or advisable in order to secure for federal estate tax purposes the maximum marital deduction available under the Internal Revenue Laws of the United States of America, and to do and perform all acts incident to such purpose.

HISTORY: Codes, 1942, § 572.5; Laws, 1964, ch. 295, eff from and after passage (approved June 6, 1964).

§ 91-7-161. Creditors whose claims are not due must accept payment.

The executor or administrator may pay any debt, duly probated, allowed and registered, which is not due. After ninety (90) days from the grant of letters, the creditor shall accept payment thereof and give a full discharge therefor, upon the payment or tender to him of an amount equal to what the debt would have been had it been made payable on the day the payment or tender is made.

HISTORY: Codes, 1892, § 1938; 1906, § 2112; Hemingway's 1917, § 1780; 1930, § 1676; 1942, § 573; Laws, 1975, ch. 373, § 6, eff from and after January 1, 1976.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 573] is indicative of a public policy favoring the early closing of estates of decedents as against delays on account of unmatured claims. In re Estate of Kennington, 204 So. 2d 444, 1967 Miss. LEXIS 1194 (Miss. 1967).

Where a marital settlement agreement provided for monthly payments to the divorced wife throughout her lifetime or until she remarried, and the agreement bound her divorced husband and his heirs, executors, and assigns even after his death, future and unmatured payments under the agreement constituted a valid claim against the deceased husband's estate, which this section [Code 1942, § 573] and the principles of equity required to be commuted to a lump sum equal to its fair cash value. In re Estate of Kennington, 204 So. 2d 444, 1967 Miss. LEXIS 1194 (Miss. 1967).

RESEARCH REFERENCES

ALR.

Power and responsibility of executor or administrator to compromise claim against estate. 72 A.L.R.2d 243.

§ 91-7-163. Claim of executor or administrator to be treated same as other claims.

An executor or administrator shall not be allowed to retain any part of the assets in payment of his own claim against the deceased, unless the same be probated and registered as other claims and passed by the court. Every such claim shall stand upon an equal footing with other claims of the same nature.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (108); 1857, ch. 60, art. 85; 1871, § 1143; 1880, § 2030; 1892, § 1935; 1906, § 2109; Hemingway's 1917, § 1777; 1930, § 1677; 1942, § 574.

Cross References — Disposal of debt owing from executor or administrator to deceased, see § 91-7-101.

JUDICIAL DECISIONS

1. In general.

Where testatrix, after executing will devising her right, title and interest in land gave deed of trust to executor covering same land and clothed him with full discretion, executor was entitled to stand on his security and not probate claim. Howell v. Ott, 182 Miss. 252, 180 So. 52, 181 So. 740, 1938 Miss. LEXIS 139 (Miss. 1938), limited, Kent v. McCaslin, 238 Miss. 129, 117 So. 2d 804, 1960 Miss. LEXIS 387 (Miss. 1960).

Administrator, whose individual claims were barred because not timely filed, could not have claims for items accruing before decedent's death allowed under guise of accounting. McDowell v. Minor, 169 Miss. 339, 142 So. 491, 1932 Miss. LEXIS 5 (Miss. 1932).

Where administrator did not file his individual claim within six months after notice to creditors should have been given, probate of claim was nullity. McDowell v. Minor, 158 Miss. 360, 130 So. 484, 1930 Miss. LEXIS 57 (Miss. 1930).

Claim of administrator against estate for individual debt not barred by limitations where duly probated and not barred at time of appointment. Oliver v. Smith, 94 Miss. 879, 49 So. 1, 1909 Miss. LEXIS 364 (Miss. 1909).

RESEARCH REFERENCES

ALR.

Appealability of probate orders allowing or disallowing claims against estate. 84 A.L.R.4th 269.

§ 91-7-165. Claims may be contested.

The executor or administrator, legatee, heir, or any creditor may contest a claim presented against the estate. The court or clerk may refer the same to auditors, who shall hear and reduce to writing the evidence on both sides, if any be offered, and report their findings with the evidence to the court. Thereupon the court may allow or disallow the claim, but such proceeding shall not be had without notice to the claimant.

HISTORY: Codes, 1857, ch. 60, art. 84; 1871, § 1142; 1880, § 2029; 1892, § 1934; 1906, § 2108; Hemingway's 1917, § 1776; 1930, § 1678; 1942, § 575.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Burden of proof of claims.
3. Evidence.
4. Decree.

1. In general.

Because a hospital was not entitled to sovereign immunity on its probated claim against an estate, the chancellor did not err by denying its sovereign-immunity claim; the chancellor had jurisdiction to adjudicate the probated claim filed by the hospital and contested by the estate because what was before the chancery court was the validity of the hospital's probated claim, not the estate's counterclaim for emotional distress, fraud, and punitive damages. In re Estate of Matute, 293 So. 3d 224, 2020 Miss. LEXIS 43 (Miss. 2020).

A former wife proved a valid claim against her former husband's estate for $30,600, where there was a prior court judgment finding that the husband was $600 in arrears in alimony payments, and their divorce decree required the husband to carry a $30,000 life insurance policy on his own life naming the wife as the policy's primary beneficiary after payment of then existing pledged debts, but the husband had let the policy lapse. Raspilair v. Estate of Raspilair, 583 So. 2d 970, 1991 Miss. LEXIS 458 (Miss. 1991).

In order for a claimant to introduce evidence to support a claim against an estate for medical expenses upon contest, the claimant may proceed under § 41-9-119, but to do this, he or she must be allowed to go into court to present the bills incurred and to testify for what purpose they were incurred. Since a summary judgment, by its nature, disposes of a case before a trial is commenced, summary judgment practice under Rule 56, Miss. R. Civ. P. is inapplicable in contests of probated claims because it is inconsistent with the statutory procedure which necessitates that a claimant enter court to introduce evidence in support of his or her claim and permits a personal representative to rebut the claim. Thus, the procedure for summary judgment is not applicable to dispose of claims made under § 91-7-149. Biloxi Regional Medical Center, Inc. v. Estate of Ross, 546 So. 2d 667, 1989 Miss. LEXIS 297 (Miss. 1989).

There is no conflict between § 91-7-165 and the discovery rules and, therefore, in a proceeding to contest a claim probated against an estate, the estate had the right under Rules 26 and 33, Miss. R. Civ. P. to propound interrogatories and secure all relief appropriate for failure to answer. Biloxi Regional Medical Center, Inc. v. Estate of Ross, 546 So. 2d 667, 1989 Miss. LEXIS 297 (Miss. 1989).

Time for taking appeal by administrator or executor unhappy with decree allowing contested claim runs from date of decree on claim, not from date of decree finally closing estate; efficient and orderly administration of estates and payment of all just debts without unjustified delay compels this result. Braxton v. Johnson, 514 So. 2d 1232 (1987).

On filing of contest of probated claim, claimant need file no pleading in absence of demand or necessity for bill of particulars. Ellis v. Berry, 145 Miss. 652, 110 So. 211, 1926 Miss. LEXIS 1 (Miss. 1926).

2. Burden of proof of claims.

One filing claim for services rendered deceased has burden to establish by clear and convincing evidence that the services were rendered pursuant to an understanding, express or implied. Wells v.

Brooks, 199 Miss. 327, 24 So. 2d 533, 1946 Miss. LEXIS 201 (Miss. 1946).

The burden of establishing a claim if contested, is upon the claimant although the claim has been admitted to probate by the clerk. Wooley v. Wooley, 194 Miss. 751, 12 So. 2d 539, 1943 Miss. LEXIS 82 (Miss. 1943).

Where it appeared that in a hearing on contested claims against an estate, the administratrix proceeded first with her testimony, claimant's contention that she thereby assumed the burden of proof and adopted the legal effect of a probated claim announced in the chancellor's opinion, and that she was estopped to take a different position on appeal, was untenable in view of the effect and weight the chancellor erroneously attached to the mere fact that the claim had been admitted to probate. Wooley v. Wooley, 194 Miss. 751, 12 So. 2d 539, 1943 Miss. LEXIS 82 (Miss. 1943).

3. Evidence.

Where a claim meets certain minimum requirements, both the person asserting the claim and the personal representative, on a contest, have the right to introduce evidence to support their positions. Central Optical Merchandising Co. v. Estate of Lowe, 249 Miss. 61, 160 So. 2d 673, 1964 Miss. LEXIS 376 (Miss. 1964).

Decision of chancellor that admission to probate of claims against an estate established a presumption of its correctness was erroneous as being a misconception of the effect of a probated claim, since a claim against an estate, although duly probated and registered, must be established by clear and reasonably positive evidence, if contested by the administratrix. Wooley v. Wooley, 194 Miss. 751, 12 So. 2d 539, 1943 Miss. LEXIS 82 (Miss. 1943).

A claim against the estate of a decedent, although duly probated and registered, must be established by clear and reasonably positive evidence, if objected to by the administrator, or by any legatee, heir, or any creditor, and contested by such party in interest. Nicholson v. Dent, Robinson & Ward, 189 Miss. 658, 198 So. 552, 1940 Miss. LEXIS 148 (Miss. 1940).

Claim against testator's estate, which purported to be itemized account or statement of claim in writing, which charged estate with purchase of note on which there was a balance due, would be disallowed where evidence clearly disclosed that there was no sale of note by claimant to testator, but that testator agreed to collect note for claimant, pay certain amount on debt of testator's son to testator and turn over balance to claimant, and that testator merely became claimant's agent or trustee for collection of note. First Columbus Nat'l Bank v. Holesapple-Dillman, 174 Miss. 234, 164 So. 232, 1935 Miss. LEXIS 73 (Miss. 1935).

Under contract for services between claimant and intestate, at a fixed compensation, declarations of intestate to third person indicating willingness to pay claimant for services then being rendered, not sufficient to establish agreement to pay extra compensation therefor. Bell v. Oates, 97 Miss. 790, 53 So. 491, 1910 Miss. LEXIS 308 (Miss. 1910).

4. Decree.

In contest of claim against decedent's estate, only decree allowing or disallowing claim can be rendered, and monetary judgment against administrator for sum for which claim is allowed, if allowed, would be erroneous. Trippe v. O'Cavanagh, 203 Miss. 537, 36 So. 2d 166, 1948 Miss. LEXIS 304 (Miss. 1948).

RESEARCH REFERENCES

ALR.

Power and responsibility of executor or administrator to compromise claim due estate. 72 A.L.R.2d 191.

Power and responsibility of executor or administrator to compromise claim against estate. 72 A.L.R.2d 243.

Validity of nonclaim statute or rule provision for notice by publication to claimants against estate – post-1950 cases. 56 A.L.R.4th 458.

Appealability of probate orders allowing or disallowing claims against estate. 84 A.L.R.4th 269.

§ 91-7-167. Creditor having lien failing to present claim.

A creditor of a decedent who has a lien of any kind on property of the decedent shall not be barred of his right to enforce the lien against the property by a failure to present his claim and have it probated and registered, but shall be barred of all claim to be satisfied out of the assets not affected by such lien. A person claiming to have a lien on any property of the decedent may be made a party to any proper proceeding by the executor or administrator or a creditor to test the validity of such claim to a lien, and to determine upon the right of such claim. This may be in a proceeding to sell property, which may be ordered to be sold free from such lien, or subject to it; and the decree may be made as to a sale and disposition of the proceeds of the sale of the property, as may be according to the rights of parties before the court.

HISTORY: Codes, 1880, § 2031; 1892, § 1937; 1906, § 2111; Hemingway's 1917, § 1779; 1930, § 1679; 1942, § 576.

Cross References — Enforcement of lien by representative of lienor, see § 85-7-261. Renewal of lien by executors and administrators, see § 91-7-227.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Jurisdiction.

1. In general.

A vendor's election to probate and register a promissory note executed in conjunction with a deed of trust against the purchaser's estate, which was not pursued, was lost at the end of the 90 day limitation period of § 91-7-151; however, that section, as qualified by § 91-7-167, did not bar the vendor's election to pursue the trust or lien establishment against the specific real estate, which arose at the time the deed of trust was mistakenly cancelled by the bank. First Nat'l Bank v. Huff, 441 So. 2d 1317, 1983 Miss. LEXIS 3003 (Miss. 1983).

There payee failed to timely probate claim on note of deceased, and was barred from asserting claim on the note as an unsecured creditor, he was entitled to recovery of the salvage value of the destroyed automobile which had been mortgaged to secure the note. Mossler Acceptance Co. v. Moore, 218 Miss. 757, 67 So. 2d 868, 1953 Miss. LEXIS 601 (Miss. 1953).

The widow and adopted daughter of an intestate were not necessary parties to a proceeding against the administratrix to foreclose a deed of trust on realty constituting a part of the estate, where the estate had been declared insolvent, the realty was in the possession of the administratrix, who was also the widow of the decedent but was made a party only as administratrix, and the daughter advised her regarding the foreclosure matters. Hubbard v. Massey, 192 Miss. 95, 4 So. 2d 230, 4 So. 2d 494, 1941 Miss. LEXIS 3 (Miss. 1941).

Where testatrix, after executing will devising her right, title and interest in land, gave deed of trust to executor covering same land and clothed him with full discretion, executor was entitled to stand on his security and not probate claim. Howell v. Ott, 182 Miss. 252, 180 So. 52, 181 So. 740, 1938 Miss. LEXIS 139 (Miss. 1938), limited, Kent v. McCaslin, 238 Miss. 129, 117 So. 2d 804, 1960 Miss. LEXIS 387 (Miss. 1960).

Lien of trust held to exist from misapplication of funds, making probate of same unnecessary to enforce it as against all but bona fide purchaser. Sandy v. Crump, 139 Miss. 163, 103 So. 804, 1925 Miss. LEXIS 122 (Miss. 1925).

An ex parte petition of an administrator erroneously stating that a lien exists on certain assets and asking permission to apply the assets to the satisfaction of the alleged lien is not a proceeding to test the validity of a claim within the meaning of this section [Code 1942, § 576]. O'Brien Bros. v. Wilson, 86 Miss. 540, 38 So. 509, 1905 Miss. LEXIS 58 (Miss. 1905).

2. Jurisdiction.

Creditor properly brought its claim before a justice court, and then appealed to the circuit court, even though a debtor's estate was still open, because creditor's action was purely a possessory action. Gandy v. Citicorp, 985 So. 2d 371, 2008 Miss. App. LEXIS 360 (Miss. Ct. App. 2008).

RESEARCH REFERENCES

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators §§ 585, 586.

CJS.

34 C.J.S., Executors and Administrators § 555.

§ 91-7-169. Growing crop.

The court or chancellor may, on the application of an executor or administrator, decree the sale of the crop growing at the time of the death of the testator or intestate, upon such terms and in such manner as may be deemed best. If the interest of the estate would be promoted by the cultivation and completion of the crop, on application therefor by the executor or administrator, it shall be so ordered by the court or chancellor; and in such case the executor or administrator shall take charge of the farm and manage the same until the crop be completed and gathered, retaining for that purpose so much of the property thereon as may be necessary. The proceeds shall be assets in his hands, the necessary expenses being first deducted; and, in either case, the executor or administrator shall render a true account of the crop. In case of the sale of the growing crop, the purchaser thereof may at all reasonable times enter upon the lands to cultivate and gather the same.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (84); 1857, ch. 60, art. 96; 1871, § 1156; 1880, § 2063; 1892, § 1882; 1906, § 2057; Hemingway's 1917, § 1722; 1930, § 1680; 1942, § 577.

Cross References — Growing crop not subject to judgment lien, see § 11-7-199.

Treatment of growing crops in event of forfeiture under mortgage or deed of trust, see §§ 11-25-25, 11-25-115.

Growing crop not subject to levy for execution or attachment, see § 13-3-137.

JUDICIAL DECISIONS

1. In general.

Crops growing on devised land at time of death of testatrix which are not needed by executor for payment of debts or cost of administration of estate pass to devisee of land rather than into estate for benefit of residuary legatees, where will devised land and all trucks, farm implements, tractors and equipment thereon and directed that immediately after death of devisor devisee should be vested with entire control over her part of property. Oberst v. Mullens, 43 So. 2d 560 (Miss. 1949).

Under this section [Code 1942, § 577], crops remaining on the lands at the date of his death, whether gathered or still in the field, and whether they are matured or not, are assets of decedent, whether testate or intestate, and as such pass into the hands of the personal representative for the payment of the debts and expenses of administration. Gordon v. James, 86 Miss. 719, 39 So. 18, 1905 Miss. LEXIS 93 (Miss. 1905).

Crops remaining on land are assets of estate passing to personal representative. Gordon v. James, 86 Miss. 719, 39 So. 18, 1905 Miss. LEXIS 93 (Miss. 1905).

A contract by a farmer to obtain supplies for making crops, under which he mortgages his personalty and crops to secure payment, does not terminate with his death, but can be enforced by and against his administrator, and such mortgage secures advances made to an administrator empowered to complete the crop. Cox v. Martin, 75 Miss. 229, 21 So. 611, 1897 Miss. LEXIS 82 (Miss. 1897).

The proceeds of crops growing on exempted property are assets in the hands of the personal representative of the deceased owner. Dickey v. Wilkins, 17 So. 374 (Miss. 1895).

Debts incurred by the administrator in cultivating the crop are privileged claims thereon, and limited thereto. Emanuel v. Norcum, 8 Miss. 150, 1843 Miss. LEXIS 69 (Miss. 1843); Hagan v. Barksdale, 44 Miss. 186, 1870 Miss. LEXIS 99 (Miss. 1870); Farley, Jurey & Co. v. Hord, 45 Miss. 96, 1871 Miss. LEXIS 55 (Miss. 1871); Hardee v. Cheatham, 52 Miss. 41, 1876 Miss. LEXIS 161 (Miss. 1876).

RESEARCH REFERENCES

Am. Jur.

21A Am. Jur. 2d, Crops §§ 29-31.

§ 91-7-171. Farm may be cultivated or rented.

The court or chancellor, upon the application of executor or administrator, may allow him to cultivate or lease the farm or lands of the decedent for a period of not exceeding fifteen months from the grant of letters testamentary or of administration, if the interest of the estate, in the opinion of the court or chancellor, would be promoted thereby; or the court or chancellor, upon the application of the executor or administrator, may allow him to cultivate or lease the farm or lands of the decedent from year to year for the purpose of paying the debts of the decedent.

HISTORY: Codes, 1892, § 1883; 1906, § 2058; Hemingway's 1917, § 1723; 1930, § 1681; 1942, § 578; Laws, 1918, ch. 125.

Cross References — Lease of lands to pay debts, see § 91-7-225.

JUDICIAL DECISIONS

1. In general.

An administrator, by consent of the heirs, may lease decedent's lands for the purpose of paying his debts. Ashley v. Young, 79 Miss. 129, 29 So. 822, 1901 Miss. LEXIS 16 (Miss. 1901).

§ 91-7-173. Executor or administrator may continue business for limited time.

The chancery court or the chancellor in vacation shall have the power to authorize the executor or administrator of a decedent, when not contrary to the provisions of a will, to continue as a going concern for a period of not exceeding three (3) years after the grant of letters, the business in which the decedent was engaged at the time of his death and, where such business is a mercantile or other business of like nature, to allow the purchase of goods in small quantities necessary to replenish the stock and promote the sale thereof, and to permit the sale of the stock of goods at retail in the regular course of business. Said stock of goods, however, shall not be sold at less than cost thereof, except by a previous order of the court or chancellor.

HISTORY: Codes, 1930, § 1682; 1942, § 579; Laws, 1926, ch. 142; Laws, 1964, ch. 298; Laws, 1966, ch. 323, § 1, eff from and after passage (approved February 8, 1966).

Cross References — Additional provisions governing the conduct of executors, administrators, and other fiduciaries, see Miss. Uniform Chancery Court Rules 6.01 et seq.

JUDICIAL DECISIONS

1. In general.

Surcharge upon executrix based upon her per se failure to secure court authority to operate a closely held corporation, which sustained losses both before and after testator's death, was not proper where the estate owned only stock in the corporation, not the business itself; further the proof failed to show that losses were caused by the failure of the executrix to act prudently in the administration of the estate. Harper v. Harper, 491 So. 2d 189, 1986 Miss. LEXIS 2508 (Miss. 1986).

The management of a corporation is vested in its board of directors and not the stockholders. Harper v. Harper, 491 So. 2d 189, 1986 Miss. LEXIS 2508 (Miss. 1986).

Court authority is not per se necessary to authorize an executrix with will annexed to exercise the estate's stock voting rights in a closely held corporation. Harper v. Harper, 491 So. 2d 189, 1986 Miss. LEXIS 2508 (Miss. 1986).

Mississippi Code § 91-7-173 refers to unincorporated businesses and not incorporated ones in which the decedent owns a stock interest, even if it is a controlling stock interest. Harper v. Harper, 491 So. 2d 189, 1986 Miss. LEXIS 2508 (Miss. 1986).

Chancery court has power to authorize an executor to continue the business of the testator. Barry v. Barry, 198 Miss. 677, 21 So. 2d 922, 1945 Miss. LEXIS 239 (Miss. 1945).

Administrator held unauthorized to operate intestate's business without an order of court being filed with clerk, which order was not effective until it reached hands of clerk. Crescent Furniture & Mattress Co. v. Morgan, 178 Miss. 824, 173 So. 290, 1937 Miss. LEXIS 211 (Miss. 1937).

Administrator was properly allowed sums for purchase of new goods and supplies, clerks' salaries and other expenses in operating intestate's business notwithstanding order of court had not been obtained where master found that during period business was so operated nothing was lost to estate. Crescent Furniture & Mattress Co. v. Morgan, 178 Miss. 824, 173 So. 290, 1937 Miss. LEXIS 211 (Miss. 1937).

RESEARCH REFERENCES

ALR.

Liability of personal representative for losses incurred in carrying on, without testamentary authorization, decedent's nonpartnership mercantile or manufacturing business. 58 A.L.R.2d 365.

Preference or priority of claims arising out of continuation of decedent's business by personal representative. 83 A.L.R.2d 1406.

Am. Jur.
31 Am. Jur. 2d, Executors and Administrators §§ 525, 527, 533.

CJS.
34 C.J.S., Executors and Administrators § 213 et seq.

§ 91-7-175. Sale of perishable property.

The court or clerk may order the sale of perishable property on such notice as may be prescribed, whether required for the payment of debts or not.

HISTORY: Codes, 1857, ch. 60, art. 87; 1871, § 1145; 1880, § 2034; 1892, § 1885; 1906, § 2060; Hemingway's 1917, § 1725; 1930, § 1683; 1942, § 580.

Cross References — Sale of perishable goods levied on generally, see § 13-3-167.

§ 91-7-177. Private sale of personal property.

The court, or the chancellor in vacation, may authorize the executor or administrator to sell personal property at a private sale.

HISTORY: Codes, 1857, ch. 60, art. 87; 1871, § 1146; 1880, § 2035; 1892, § 1886; 1906, § 2061; Hemingway's 1917, § 1726; 1930, § 1684; 1942, § 581.

Cross References — Authority of chancellor or chancery court to order private sales, see § 11-5-117.

JUDICIAL DECISIONS

1. In general.
This section [Code 1942, § 581] allows private sale of personal property by an administrator for less than its appraised value, but in making such sale without a prior court order the administrator runs the risk of the court's subsequent disapproval. Dabbs v. Fisher, 27 So. 2d 342 (Miss. 1946).

§ 91-7-179. Sale for appraised value without order.

The executor or administrator, without an order therefor, may sell for cash, either at public or private sale, perishable goods or chattels or livestock of the decedent, whether it be necessary for the payment of debts and expenses of administration or not. He may likewise sell any personal property of the decedent necessary for the payment of the debts and expenses, but he shall realize therefor at least the appraised value of such property.

HISTORY: Codes, 1880, § 2038; 1892, § 1888; 1906, § 2063; Hemingway's 1917, § 1728; 1930, § 1685; 1942, § 582.

§ 91-7-181. Certain property may be sold without being present.

An executor or administrator may sell the interest of his testator or intestate in a ship, vessel, steamboat, other water craft, or other property which he cannot produce, without the same being present at the time and place of sale.

HISTORY: Codes, 1857, ch. 60, art. 87; 1871, § 1146; 1880, § 2036; 1892, § 1887; 1906, § 2062; Hemingway's 1917, § 1727; 1930, § 1686; 1942, § 583.

§ 91-7-183. Public sale of personal property.

If it be necessary to sell personal property for the payment of debts, or in case there are no debts and it is to the best interest of all parties concerned, the executor or administrator shall file a petition for an order of sale in which the reasons for the same shall be made known. In case there are no debts, five days' notice to the parties in interest who have not joined in said petition shall be given of the time and place of hearing said petition, or publication made, as provided by law, for nonresident or unknown defendants in chancery. If the court or chancellor in vacation be satisfied that a sale is necessary or proper, an order may be made for the sale of part or the whole of the personal estate; and if a part be ordered sold, the court or chancellor in vacation in selecting such part shall have in view the best interest of the creditors and distributees. The executor or administrator shall advertise in three or more public places in the county ten days before the sale, and shall sell the property designated in the order at public sale to the highest bidder, either for cash or credit, as the order of sale may direct. The executor or administrator shall not become the purchaser of any property which he may sell, either directly or indirectly, nor shall any executor or administrator take the estate or any part thereof at the appraised value.

HISTORY: Codes, 1857, ch. 60. art. 86; 1871, § 1144; 1880, § 2032; 1892, § 1884; 1906, § 2059; Hemingway's 1917, § 1724; 1930, § 1687; 1942, § 584.

Cross References — Sales under decree by chancery court, see § 11-5-93 et seq. Where property under execution or other process shall be sold, see § 13-3-161 et seq.

JUDICIAL DECISIONS

1. In general.

Sale of decedent's property without legal citation to beneficiaries in will is valid where will relieves executor from legal citation to interested parties. Walker v. First Nat'l Bank, 204 Miss. 696, 38 So. 2d 98, 1948 Miss. LEXIS 398 (Miss. 1948).

Objection to executor's sale of wholesale grocery business on ground that it was not sufficiently advertised is not well taken when, under the terms of will under which sale was made, no public notice of proposed sale was required to be given. Walker v. First Nat'l Bank, 204 Miss. 696, 38 So. 2d 98, 1948 Miss. LEXIS 398 (Miss. 1948).

Objection to executor's sale of wholesale grocery business on ground that it was not sufficiently advertised is not well taken where publication containing elements of sale was made in three newspapers for period of approximately a week, prospective bidders were notified by telephone and letters, many people inspected property, successful bid exceeded appraised value, and objectors produced no proof more than possibility or speculation that had sale been postponed for ten or twenty days there would have been higher, or more numerous, bids on the later date. Walker v. First Nat'l Bank, 204 Miss. 696, 38 So. 2d 98, 1948 Miss. LEXIS 398 (Miss. 1948).

RESEARCH REFERENCES

ALR.

Right of an administrator with the will annexed, or trustee other than the person named in the will as such, to execute power of sale conferred by will. 9 A.L.R.2d 1324.

Power of sale conferred on executor by testator as authorizing private sale. 11 A.L.R.2d 955.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators §§ 725, 728.

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 741 et seq. (sale of personal property).

CJS.

34 C.J.S., Executors and Administrators § 700 et seq.

§ 91-7-185. Report of sale and proceedings.

Whenever personal property shall be sold by an executor or administrator, he shall make report thereof in writing to the next term of the court, stating the time and place of sale, the name of the purchaser, and the amount of the purchase-money, and shall satisfy the court that the directions prescribed in the order for sale, if the sale be under an order, were followed. Thereupon the court shall confirm the sale, unless cause be shown to the contrary. If such sale be not reported at the next term, the court may compel the making of such report at a subsequent term, and may confirm or set aside the same. Any executor or administrator failing to make report in due time may be fined for a contempt, not exceeding One Hundred Dollars ($100.00).

HISTORY: Codes, 1857, ch. 60, art. 87; 1871, § 1147; 1880, § 2037; 1892, § 1889; 1906, § 2064; Hemingway's 1917, § 1729; 1930, § 1688; 1942, § 585.

JUDICIAL DECISIONS

1. In general.

Supreme court will not say that confirmation of sale of wholesale grocery business by executor, acting under authority of will, was manifestly wrong, when it is not pointed out by what means or manner a higher price could have been obtained for the assets of the estate nor in what respect beneficiaries in will suffered any loss. Walker v. First Nat'l Bank, 204 Miss. 696, 38 So. 2d 98, 1948 Miss. LEXIS 398 (Miss. 1948).

§ 91-7-187. Sale of land in preference to personalty.

When the estate of any deceased person consists of real and personal property and it shall be necessary to sell a portion thereof, the chancery court, on petition of the executor, administrator, legatees or distributees, being satisfied that it would be to the interest of the distributees or legatees, may decree a sale of the real estate in preference to the personal estate.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 8 (2); 1857, ch. 60, art. 93; 1871, § 1153; 1880, § 2042; 1892, § 1900; 1906, § 2075; Hemingway's 1917, § 1742; 1930, § 1689; 1942, § 586.

JUDICIAL DECISIONS

1. In general.

Sale of real estate made by heir was in his individual capacity as owner of property, as sole surviving heir at law of his father, and suit for commission by real estate agent, who alleged she procured purchaser for home, could not be maintained against estate, because conditions for sale of real estate by administrator of estate established in §§ 91-7-187 and 91-7-191 had not been shown to exist. Estate of Manscoe v. Simmons, 512 So. 2d 682, 1987 Miss. LEXIS 2781 (Miss. 1987).

Sale under execution of land of decedent pursuant to decree recovered against administrator held void for noncompliance with statutes regulating proceedings for sale of decedent's land for payment of debts. Dolan v. Tate, 161 Miss. 615, 137 So. 515, 1931 Miss. LEXIS 291 (Miss. 1931).

Heirs of decedent suing to remove, as cloud on title, claim asserted through purchase at execution sale under judgment against ancestor's representative, need not offer to pay judgment or amount for which land was sold. Dolan v. Tate, 161 Miss. 615, 137 So. 515, 1931 Miss. LEXIS 291 (Miss. 1931).

Under this section [Code 1942, § 586] and other sections providing for the sale of property by the personal representative for the payment of debts, it is the legal duty of such representative to pay the taxes on lands for the purpose of preserving them for the benefit of creditors. Tonnar v. Wade, 153 Miss. 722, 121 So. 156, 1929 Miss. LEXIS 56 (Miss. 1929).

This section [Code 1942, § 586] applies whether the property is devised by will or descends by operation of law. Brickell v. Lightcap, 115 Miss. 417, 76 So. 489, 1917 Miss. LEXIS 218 (Miss. 1917), overruled, Harper v. Harper, 491 So. 2d 189, 1986 Miss. LEXIS 2508 (Miss. 1986).

RESEARCH REFERENCES

ALR.

Right of an administrator with the will annexed, or trustee other than the person named in the will as such, to execute power of sale conferred by will. 9 A.L.R.2d 1324.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators §§ 725, 730 et seq.

§ 91-7-189. Sale to pay the purchase-money of land.

If a person purchase land and die before paying therefor, the court may order the sale of personal property for the payment of the debt due for the land. If the personal property will not be sufficient, if sold, to pay the debt, or if it be advisable that the land be sold in preference to personal property to make payment therefor, the court may order the sale of such land on such terms as may be proper. In such case the vendor of the deceased and his assignee of the debt, if any, shall be made defendants to the petition for the sale of the land.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (96); 1857, ch. 60, art. 138; 1871, § 1196; 1880, § 2043; 1892, § 1901; 1906, § 2076; Hemingway's 1917, § 1743; 1930, § 1690; 1942, § 587.

Cross References — Preference of purchase money mortgage, see § 89-1-45.

JUDICIAL DECISIONS

1. In general.

A sale made under this section [Code 1942, § 587] is not for the benefit of creditors at large, nor is the fund subject to pro rata distribution. Wells v. Smith, 44 Miss. 296, 1870 Miss. LEXIS 110 (Miss. 1870).

§ 91-7-191. Sale of land upon insufficiency of personalty.

Whenever it shall be necessary for an executor or administrator to sell property to pay the debts and expenses of the estate, he may file a petition in the chancery court for the sale of the land of the deceased, or so much of it as may be necessary, and exhibit to the court a true account of the personal estate and debts due from the deceased, and the expenses and a description of the land to be sold. Any sale of land shall be subject to the abatement provisions of Section 91-7-90.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (98); 1857, ch. 60, art. 88; 1871, § 1148; 1880, § 2039; 1892, § 1893; 1906, § 2068; Hemingway's 1917, § 1735; 1930, § 1691; 1942, § 588; Laws, 2019, ch. 458, § 13, eff from and after July 1, 2019.

Cross References — When exempt property shall be liable for debts, see § 91-1-21.

JUDICIAL DECISIONS

1. In general.

Sale of real estate made by heir was in his individual capacity as owner of property, as sole surviving heir at law of his father, and suit for commission by real estate agent, who alleged she procured purchaser for home, could not be maintained against estate, because conditions for sale of real estate by administrator of estate established in §§ 91-7-187 and 91-7-191 had not been shown to exist. Estate of Manscoe v. Simmons, 512 So. 2d 682, 1987 Miss. LEXIS 2781 (Miss. 1987).

A will manifests the testator's intention that the property transferred to his wife be free of estate taxes where "Item IV" exempts from the payment of estate taxes and administration costs those bequests made earlier in the will to his wife and "Item III" specifically states that his wife is to receive $4,800 a year "free of any debts" and therefore this property cannot bear the burden of estate taxes. Waldrup v. United States, 499 F. Supp. 820, 1980 U.S. Dist. LEXIS 16059 (N.D. Miss. 1980).

In the absence of a direction to the contrary by the testator, estate taxes must be paid first from personal property not specifically devised by will, secondly from other personalty of the estate, and thirdly, if necessary, from the real estate. Stovall v. Stovall, 360 So. 2d 679, 1978 Miss. LEXIS 2295 (Miss. 1978).

No court other than chancery court in which letters of administration have been granted has jurisdiction over petition for sale of decedent's nonexempt lands for payment of decedent's debts. Trippe v. O'Cavanagh, 203 Miss. 537, 36 So. 2d 166, 1948 Miss. LEXIS 304 (Miss. 1948).

Petition for sale of nonexempt lands of estate for payment of decedent's debts when personalty is insufficient should be filed by executor or administrator, but may be filed by creditor of decedent whose claim against estate is registered. Trippe v. O'Cavanagh, 203 Miss. 537, 36 So. 2d 166, 1948 Miss. LEXIS 304 (Miss. 1948).

Petition for sale of decedent's lands in one county to pay debts may be heard by chancellor in second county within same chancery district. Whitley v. Towle, 163 Miss. 418, 141 So. 571, 1932 Miss. LEXIS 57 (Miss. 1932).

Under this section [Code 1942, § 588] and Code 1942, § 539, the personal estate must be exhausted before the lands may be resorted to for the payment of debts, unless a contrary intent be manifested in the will of the decedent. Gordon v. James, 86 Miss. 719, 39 So. 18, 1905 Miss. LEXIS 93 (Miss. 1905).

Personal estate must be exhausted before resort to land whether decedent died testate or intestate, unless contrary intent manifested by will, and specific bequest must be exhausted before specific devises can be compelled to contribute. Gordon v. James, 86 Miss. 719, 39 So. 18, 1905 Miss. LEXIS 93 (Miss. 1905).

RESEARCH REFERENCES

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators §§ 725, 730 et seq.

CJS.

34 C.J.S., Executors and Administrators § 704 et seq.

Law Reviews.

1978 Mississippi Supreme Court Review: Miscellaneous. 50 Miss. L. J. 165, March, 1979.

§ 91-7-193. Waste of personal estate no bar.

The fact that the insufficiency of the personal estate arose from the waste of the executor or administrator shall not be a defense to an application to sell land to pay debts, if such executor or administrator and sureties on his bond as such, if any, are insolvent or nonresidents of this state.

HISTORY: Codes, 1880, § 2041; 1892, § 1899; 1906, § 2074; Hemingway's 1917, § 1741; 1930, § 1692; 1942, § 589.

§ 91-7-195. Creditors may apply for sale of property.

Any creditor of the decedent whose claim against the estate is registered shall have the right to file a petition, as the executor or administrator may, for the sale of land or personal property of the decedent for the payment of debts. The court shall hear and decide upon such petition, and decree as if the application had been made by the executor or administrator, and may order the executor or administrator to make the sale. Any sale of land shall be subject to the abatement provisions of Section 91-7-90.

HISTORY: Codes, 1880, § 2047; 1892, § 1895; 1906, § 2070; Hemingway's 1917, § 1737; 1930, § 1693; 1942, § 590; Laws, 2019, ch. 458, § 14, eff from and after July 1, 2019.

JUDICIAL DECISIONS

1. In general.

Dismissal of an action alleging waste due to the cutting of timber was improperly dismissed on the basis that an estate lacked standing to bring the action since it had no interest therein and no power to bring such an action; the trial court should have allowed a substitution of the heirs as parties to the action. Tolbert v. Southgate Timber Co., 943 So. 2d 90, 2006 Miss. App. LEXIS 868 (Miss. Ct. App. 2006).

In a suit by a devisee to remove and cancel clouds on her title to an undivided ½ interest in minerals in land which was sold at an execution sale, the 2-year statute of limitations on actions to recover property sold by an order of the chancery court [Code 1972, § 15-1-37] was inapplicable since "order of a chancery court" contemplates an order entered after compliance with Code 1972, § 91-7-195, providing that a petition be filed with the court by creditors of a decedent having registered claims against an estate for the sale of land or personal property for payment of debts, and Code 1972, § 91-7-197, providing that all interested parties shall be cited by summons or publication specifying the time and place of the hearing on the petition. Simmons v. Abney, 292 So. 2d 168, 1974 Miss. LEXIS 1762 (Miss. 1974).

Petition for sale of nonexempt lands of estate for payment of decedent's debts when personalty is insufficient should be filed by executor or administrator, but may be filed by creditor of decedent whose claim against estate is registered. Trippe v. O'Cavanagh, 203 Miss. 537, 36 So. 2d 166, 1948 Miss. LEXIS 304 (Miss. 1948).

No court other than chancery court in which letters of administration have been granted has jurisdiction over petition for sale of decedent's nonexempt lands for payment of decedent's debts. Trippe v. O'Cavanagh, 203 Miss. 537, 36 So. 2d 166, 1948 Miss. LEXIS 304 (Miss. 1948).

Sale under execution of land of decedent pursuant to decree recovered against administrator held void for noncompliance with statutes regulating proceedings for sale of decedent's land for payment of debts. Dolan v. Tate, 161 Miss. 615, 137 So. 515, 1931 Miss. LEXIS 291 (Miss. 1931).

Heirs of decedent suing to remove, as cloud on title, claim asserted through purchase at execution sale under judgment against ancestor's representative, need not offer to pay judgment or amount for which land was sold. Dolan v. Tate, 161 Miss. 615, 137 So. 515, 1931 Miss. LEXIS 291 (Miss. 1931).

Creditor who had properly registered claim may file bill in chancery for sale of lands of estate to pay debts. Halliburton v. Crichton, 147 Miss. 621, 111 So. 743, 1927 Miss. LEXIS 276 (Miss. 1927).

This section [Code 1942, § 590] authorizes a petition by a creditor only when his claim is properly registered, after being probated and allowed. Cheairs v. Cheairs, 81 Miss. 662, 33 So. 414, 1902 Miss. LEXIS 180 (Miss. 1902).

Where the probate fails to conform to the requirements of Code 1942, § 568, a creditor cannot file a petition to sell land or personalty. Cheairs v. Cheairs, 81 Miss. 662, 33 So. 414, 1902 Miss. LEXIS 180 (Miss. 1902).

RESEARCH REFERENCES

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 797.

CJS.

34 C.J.S., Executors and Administrators §§ 711-713.

§ 91-7-197. Interested parties to be cited upon petition to sell property.

When a petition shall be filed to sell or lease land to pay debts or otherwise affecting the real estate of a deceased person, all parties interested shall be cited by summons or publication, which shall specify the time and place of hearing the petition. If the petition be filed by a creditor or by a purchaser to correct a mistake in the description of the land, the executor or administrator shall be cited.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (98); 1857, ch. 60, art. 117; 1871, § 1148; 1880, §§ 2039, 2042, 2043, 2047; 1892, § 1904; 1906, § 2079; Hemingway's 1917, § 1746; 1930, § 1694; 1942, § 591.

JUDICIAL DECISIONS

1. In general.

Beneficiaries under residual testamentary trusts are "parties interested" so as to be entitled to the notice required under Mississippi Code § 91-7-197; Brickell v. Lightcap (1917) 115 Miss 417, 76 So 489 is thus overruled; however, this new rule of law will apply prospectively only. Harper v. Harper, 491 So. 2d 189, 1986 Miss. LEXIS 2508 (Miss. 1986).

Petitioner, who had entered into a contract whereby an executrix agreed to sell and convey certain property to petitioner after the probate of a will, was not a "party interested" within the meaning of § 91-7-197, but was rather one with a contingent interest, and therefore lacked standing to file a direct action in the estate proceeding to change and modify a previous order thereto, since the executrix' title to the property was the will itself and petitioner's interest in the property was merely contingent and depended solely on the outcome of the suit to contest the will. Turner v. Estate of Hightower, 417 So. 2d 919, 1982 Miss. LEXIS 2091 (Miss. 1982).

In a suit by a devisee to remove and cancel clouds on her title to an undivided ½ interest in minerals in land which was sold at an execution sale, the 2-year statute of limitations on actions to recover property sold by an order of the chancery court [Code 1972, § 15-1-37] was inapplicable since "order of a chancery court" contemplates an order entered after compliance with Code 1972, § 91-7-195, providing that a petition be filed with the court by creditors of a decedent having registered claims against an estate for the sale of land or personal property for payment of debts, and Code 1972, § 91-7-197, providing that all interested parties shall be cited by summons or publication specifying the time and place of the hearing on the petition. Simmons v. Abney, 292 So. 2d 168, 1974 Miss. LEXIS 1762 (Miss. 1974).

Judgment creditors, solely as such, of the heirs or devisees, or of some of them, are not necessary or interested parties with respect to the question of notice under this section [Code 1942, § 591]. Townsend v. Beavers, 185 Miss. 312, 188 So. 1, 1939 Miss. LEXIS 154 (Miss. 1939).

Failure of creditors instituting proceedings against widow as administratrix to have deceased's land sold to pay debts to make widow in individual capacity and adult children parties held to require reversal and remandment, although decree adjudged that land was exempt. Eastman Gardiner Lumber Co. v. Carr, 175 Miss. 36, 166 So. 401, 1936 Miss. LEXIS 28 (Miss. 1936).

Decree for sale of land to pay debts of deceased which affects rights of heirs at law or devisees and which is rendered without process upon them is void. Eastman Gardiner Lumber Co. v. Carr, 175 Miss. 36, 166 So. 401, 1936 Miss. LEXIS 28 (Miss. 1936).

Where chancellor had jurisdiction of minor heirs and subject-matter in administratrix's petition for leave to sell, any defects in process and insufficiency of time held not to prevent application of two years' limitations. Neely v. Craig, 162 Miss. 712, 139 So. 835, 1932 Miss. LEXIS 147 (Miss. 1932).

Sale under execution of land of decedent pursuant to decree recovered against administrator held void for noncompliance with statutes regulating proceedings for sale of decedent's land for payment of debts. Dolan v. Tate, 161 Miss. 615, 137 So. 515, 1931 Miss. LEXIS 291 (Miss. 1931).

Where heirs at law, after the death of their intestate, conveyed his land, and then attempted to have it subjected to the payment of debts, thereby relieving the personal estate, the grantee of the land was a vitally interested party. Blum v. Planters' Bank & Trust Co., 154 Miss. 800, 122 So. 784, 1929 Miss. LEXIS 177 (Miss. 1929).

Contingent remaindermen not necessary parties to proceeding for sale of real estate to discharge accumulated annuities without affirmative showing of existence of persons with vested interest. Swayze v. Powell, 153 Miss. 829, 121 So. 852, 1929 Miss. LEXIS 92 (Miss. 1929).

Heirs and devisees entitled to notice and hearing on proceeding by executor to obtain possession of real estate, where specific control not conferred by will and there was sufficient cash to pay debts. Miles v. Fink, 119 Miss. 147, 80 So. 532, 1918 Miss. LEXIS 24 (Miss. 1918).

RESEARCH REFERENCES

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 799 et seq.

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 831 et seq. (notice).

CJS.

34 C.J.S., Executors and Administrators §§ 732-735.

Law Reviews.

Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March, 1982.

§ 91-7-199. Hearing and decree.

The court, after service of summons or proof of publication, shall hear and examine the allegations and evidence in support of the petition and the objections to and evidence against it, if any. If on such hearing the court be satisfied that the land ought to be sold to pay the debts of the descendent and expenses of the estate, it may make a decree for the sale of a part or the whole of the land; and when a part only is decreed to be sold, the decree shall specify what part. If the real estate be so situated that a part cannot be sold without manifest prejudice to the heirs or devisees, the court may decree that the whole shall be sold; and the overplus arising from such sale, after the payment of debts and expenses, shall be distributed amongst the heirs according to the law of descents, or amongst the devisees according to the will. The sale of the land and distribution of the proceeds of the sale shall be subject to the abatement provisions of Section 91-7-90.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (98); 1857, ch. 60, art. 89; 1871, § 1149; 1880, § 2040; 1892, § 1894; 1906, § 2069; Hemingway's 1917, § 1736; 1930, § 1695; 1942, § 592; Laws, 2019, ch. 458, § 15, eff from and after July 1, 2019.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Decree, and its effect.

1. In general.

A chancellor improperly ordered a sale of the property in an estate to satisfy debts thereof, where there was no proof as to the debts due and expenses of the estate. Brown v. McAfee, 421 So. 2d 1061, 1982 Miss. LEXIS 2279 (Miss. 1982).

Upon denial of parties in interest, summoned on petition of creditor to sell land to pay debts, that the personalty was insufficient therefor, it was the duty of the court to hear evidence on the issue made. Blum v. Planters' Bank & Trust Co., 154 Miss. 800, 122 So. 784, 1929 Miss. LEXIS 177 (Miss. 1929).

Creditor filing petition to sell land to pay debts had burden of proving personalty was insufficient therefor. Blum v. Planters' Bank & Trust Co., 154 Miss. 800, 122 So. 784, 1929 Miss. LEXIS 177 (Miss. 1929).

Court had duty of hearing evidence on issue made by pleadings in proceeding by creditor to sell land to pay debts. Blum v. Planters' Bank & Trust Co., 154 Miss. 800, 122 So. 784, 1929 Miss. LEXIS 177 (Miss. 1929).

Court, on petition of creditor to sell land to pay debts, had duty of adjudicating asserted vendor's lien on cross-petition of party in interest. Blum v. Planters' Bank & Trust Co., 154 Miss. 800, 122 So. 784, 1929 Miss. LEXIS 177 (Miss. 1929).

Executor cannot purchase at chancery sale to pay debts, and his vendees do not acquire title. Belt v. Adams, 124 Miss. 194, 86 So. 584, 1920 Miss. LEXIS 485 (Miss. 1920).

2. Decree, and its effect.

In proceedings divesting title to lands out of the legatees or heirs and vesting the same in the executor or administrator the statutes must necessarily be complied with to effect such a divestiture, and where the decree of court ordering sale did not adjudicate that the personal estate was insufficient to pay debts and that land ought to be sold for that purpose, did not decree the sale of a part or the whole of the land, and described no land, it was wholly insufficient to order a judicial sale. McWilliams v. Estate of Brown, 183 So. 2d 820, 1966 Miss. LEXIS 1443 (Miss. 1966).

Where sale of land to pay debts is shown to have been made under a solemn decree of chancery court, with proper notice and appearance by all parties in interest, and that decree of confirmation was unappealed from, the presumption is that chancery court had acted in good faith in ordering the sale and that administratrix was guilty of no bad faith in conducting the sale and conveying the property to the purchaser, the court necessarily adjudicating that the property had brought a fair price in confirming the sale. Gill v. Johnson, 206 Miss. 707, 40 So. 2d 600, 1949 Miss. LEXIS 295 (Miss. 1949).

Decree for sale of land to pay debts of deceased which affects rights of heirs at law or devisees and which is rendered without process upon them is void. Eastman Gardiner Lumber Co. v. Carr, 175 Miss. 36, 166 So. 401, 1936 Miss. LEXIS 28 (Miss. 1936).

Sale under execution of land of decedent pursuant to decree recovered against administrator held void for noncompliance with statutes regulating proceedings for sale of decedent's land for payment of debts. Dolan v. Tate, 161 Miss. 615, 137 So. 515, 1931 Miss. LEXIS 291 (Miss. 1931).

Heirs of decedent suing to remove, as cloud on title, claim asserted through purchase at execution sale under judgment against ancestor's representative, need not offer to pay judgment or amount for which land was sold. Dolan v. Tate, 161 Miss. 615, 137 So. 515, 1931 Miss. LEXIS 291 (Miss. 1931).

Decree ordering sale of land to pay debts was final decree as regards appeal. Blum v. Planters' Bank & Trust Co., 154 Miss. 800, 122 So. 784, 1929 Miss. LEXIS 177 (Miss. 1929).

A sale decreed to be made for cash is void if part of the purchase money is not paid, but credited on a debt due from the purchaser to the executor individually; and a confirmation upon a report concealing the facts is fraudulent and does not validate the sale. Sharpley v. Plant, 79 Miss. 175, 28 So. 799, 1901 Miss. LEXIS 3 (Miss. 1901).

A decree ordering lands sold for the payment of debts, without notice to the parties in interest, is void. United States v. Curry, 47 U.S. 106, 12 L. Ed. 363, 1848 U.S. LEXIS 302 (U.S. 1848).

RESEARCH REFERENCES

Am. Jur.
31 Am. Jur. 2d, Executors and Administrators § 804 et seq.

CJS.
34 C.J.S., Executors and Administrators § 738 et seq.

§ 91-7-201. Mistake in description of land may be corrected.

If any mistake shall be made in the description of any land of a decedent sold or leased, either in the petition, decree, or other part of the proceedings, the same may be corrected by the court on petition of the creditor or purchaser or his assigns, and on citation to the executor or administrator.

HISTORY: Codes, 1892, § 1897; 1906, § 2072; Hemingway's 1917, § 1739; 1930, § 1696; 1942, § 593.

JUDICIAL DECISIONS

1. In general.
Sale of land not included in petition, nor in decree of confirmation, not "mistake in description." Pearson v. Caldwell, 93 Miss. 637, 47 So. 436, 1908 Miss. LEXIS 141 (Miss. 1908).

§ 91-7-203. Bond to pay debts may be given and decree for sale not made.

A decree for the sale or lease of land shall not be made if any person interested will give bond, describing therein the land sought to be sold, payable to the executor or administrator in a sum to be fixed and with sureties approved by the court, conditioned to pay all the debts duly registered against the estate and the expenses of the administration, so far as the personal estate of the deceased shall be insufficient to pay the same. Such bond shall be filed among the papers of administration and entered on the minutes of the court, and shall have the force and effect of a judgment, upon which execution and other necessary process may be issued in the name of the executor or administrator, after the expiration of six months from the date it shall have been given, against the obligors therein from time to time, until such debts and expenses of administration be paid or the penalty of the bond exhausted. The same may be levied on the lands described in the bond, and the entire interest of the deceased therein may be sold as if the court had decreed the sale in the first instance; and the property of the sureties on said bond may be sold for whatever the land may be insufficient to pay. Instead of enforcing said bond, the executor or administrator or any creditor may petition anew for the sale of the land, as if such bond had not been given; and after the sale under such proceedings, the bond may be enforced, in the manner provided, for whatever the land may be insufficient to pay, and no other bond shall be allowed to prevent a decree for a sale or lease of the land.

HISTORY: Codes, 1892, § 1898; 1906, § 2073; Hemingway's 1917, § 1740; 1930, § 1697; 1942, § 594.

§ 91-7-205. Bond required in decree for sale of lands; waiver of bond.

(1) Except as otherwise provided in subsection (2) of this section, whenever an executor or administrator sells land pursuant to a decree of the court or chancellor in vacation, said executor or administrator shall execute bond with sufficient sureties in an amount equal to the proceeds of the sale of the land. Said bond shall be executed any time before confirmation of sale, either by the court or chancellor in vacation, and may be approved by the court, chancellor in vacation, or the clerk of the chancery court. Such bond shall be payable to the state and shall be conditioned for the faithful application of the proceeds of the sale. When, however, decree ordering the sale of land shall fix an amount or estimated amount to be paid in cash before confirmation, the executor or administrator shall, before sale, execute bond with sufficient sureties to cover such amount or estimated amount to be paid in cash, conditioned for the faithful application of the same which bond may be approved by the court, the chancellor in vacation, or the clerk of the chancery court.

After the expiration of the time in which all claims against the estate of deceased persons must be registered, probated and allowed as provided in Section 91-7-151, Mississippi Code of 1972, the chancellor may waive all or any part of the bond when all the beneficiaries to the proceeds of the sale petition the court to authorize the sale and waive the necessity of a bond.

(2) At the discretion of the court or chancellor, all or any part of the bond described in subsection (1) of this section may be waived but, in such case, the chancellor shall make adequate and sufficient provision for the maintenance and safety of the assets of the estate. Upon waiver of such bond, the court or chancellor may require the proceeds from the sale of land to be held in trust by an executor, administrator or other qualified person and may require such proceeds to be maintained as otherwise ordered by the court in such manner as the court may direct, consistent with the provisions of this subsection.

HISTORY: Codes, 1880, § 2045; 1892, § 1905; 1906, § 2080; Hemingway's 1917, § 1747; 1930, § 1698; 1942, § 595; Laws, 1914, ch. 210; Laws, 1975, ch. 405; Laws, 2015, ch. 324, § 1, eff from and after July 1, 2015.

JUDICIAL DECISIONS

1. In general.

Administratrix de bonis non entitled to allowance for premium on special bond executed to collect money for land sold by her predecessor under order of court. Davis v. Blumenberg, 107 Miss. 432, 65 So. 503, 1914 Miss. LEXIS 102 (Miss. 1914).

Parol testimony by an administrator that he executed the statutory bond is incompetent in the absence of a showing that search had been made for the bond itself by the person charged with its custody in the place where by law it should be kept. Shannon v. Summers, 86 Miss. 619, 38 So. 345, 1905 Miss. LEXIS 41 (Miss. 1905).

An executor must give the bond required for the faithful application of the proceeds, although the will authorizes him to administer the estate without bond, and if he fails to do so the sale will be void. Sharpley v. Plant, 79 Miss. 175, 28 So. 799, 1901 Miss. LEXIS 3 (Miss. 1901).

RESEARCH REFERENCES

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 811.

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 871 et seq. (posting of bond).

CJS.

34 C.J.S., Executors and Administrators §§ 758, 759.

§ 91-7-207. Failure to give bond.

If an executor or administrator who has been ordered to sell land of a decedent fail to give the bond required, the court may, after five days' notice to the executor or administrator, direct a master or special commissioner to make the sale, who shall give bond with sureties, as the executor or administrator was required to do, and make sale and report it and, after a confirmation of the sale, convey the land as the executor or administrator might have done under the decree. The master or commissioner shall be allowed by the court such commissions as would accrue from the sale to the executor or administrator, or such compensation as the court may order.

HISTORY: Codes, 1880, § 2046; 1892, § 1906; 1906, § 2081; Hemingway's 1917, § 1748; 1930, § 1699; 1942, § 596.

§ 91-7-209. Purchase-money a charge on property.

Where the property of a decedent shall be sold by order of the court in which the estate is being administered, and the price paid at such sale for the property has been applied to the payment of debts for which the property might lawfully have been sold, or has been distributed to the heirs, legatees, or distributees, or to the guardians of such as have guardians, the property, if such sale were illegal, shall be charged in favor of the purchaser and his assigns with a lien for the purchase-money paid for it at such sale, and interest thereon. Such lien may be enforced in chancery or may be availed of in defense of any action for the land, in the same manner in which a claim for valuable improvements may be allowed in equity. In case of personal property, the possessor having such lien shall be entitled to retain possession until his claim be paid or tendered, unless the party having the title shall resort to the chancery court to adjust the rights of the parties and to sell said property.

HISTORY: Codes, 1880, § 2052; 1892, § 1907; 1906, § 2082; Hemingway's 1917, § 1749; 1930, § 1700; 1942, § 597.

Cross References — Preference of purchase money mortgages, see § 89-1-45.

JUDICIAL DECISIONS

1. In general.

But if the money in such cases were paid by the administrator to the creditors of the estate, the purchaser has only a lien on the land, and his injunction should be limited accordingly. Hill v. Billingsly, 53 Miss. 111, 1876 Miss. LEXIS 43 (Miss. 1876).

If the heir, after majority, receive or retain the purchase money of a void sale of land, he will be estopped from executing a judgment in ejectment therefor, and may be restrained by any party claiming under the purchaser. Gaines v. Kennedy, 53 Miss. 103, 1876 Miss. LEXIS 42 (Miss. 1876).

One who, through an illegal sale of decedent's land, paid money into the hands of an administrator, which was used to pay debts of the decedent, is entitled, in equity, to be reimbursed out of the proceeds of a subsequent valid sale. Short v. Porter, 44 Miss. 533, 1871 Miss. LEXIS 11 (Miss. 1871); Cole v. Johnson, 53 Miss. 94, 1876 Miss. LEXIS 41 (Miss. 1876); Gaines v. Kennedy, 53 Miss. 103, 1876 Miss. LEXIS 42 (Miss. 1876).

The purchaser of the lands at a void sale by an administrator can claim no equity with respect to the land purchased, as against the heirs, except so far as the purchase money has been paid and applied to their benefit. Jayne v. Boisgerard, 39 Miss. 796, 1861 Miss. LEXIS 16 (Miss. 1861).

§ 91-7-211. Estoppel from receipt of purchase-money.

Nothing in Section 91-7-209 shall hinder the application of the doctrine of estoppel to assert title to adult heirs who received a share of the purchase-money of land as heretofore announced and applied in this state. The same rule may be applied to minors, persons of unsound mind, convicts of felony, and other wards whose guardians received for them a share of the purchase-money, whether it were actually applied to the benefit of or received by such person under disability or not.

HISTORY: Codes, 1880, § 2053; 1892, § 1908; 1906, § 2083; Hemingway's 1917, § 1750; 1930, § 1701; 1942, § 598.

JUDICIAL DECISIONS

1. In general.

If a ward, after majority, receive from the guardian the proceeds of a void sale, it will be an affirmance of the sale. Handy v. Noonan, 51 Miss. 166, 1875 Miss. LEXIS 29 (Miss. 1875); Gaines v. Kennedy, 53 Miss. 103, 1876 Miss. LEXIS 42 (Miss. 1876); Hill v. Billingsly, 53 Miss. 111, 1876 Miss. LEXIS 43 (Miss. 1876).

Under doctrine referred to in the section [Code 1942, § 598], if the heir, after majority, receive from the administrator the proceeds of a void sale, it will be an affirmance of the sale. Lee v. Gardiner, 26 Miss. 521, 1853 Miss. LEXIS 135 (Miss. 1853); Kempe v. Pintard, 32 Miss. 324, 1856 Miss. LEXIS 212 (Miss. 1856); Wilie v. Brooks, 45 Miss. 542, 1871 Miss. LEXIS 99 (Miss. 1871).

§ 91-7-213. Borrowing money to pay claims.

When an executor or administrator shall discover that the personal property will not be sufficient to pay the debts of the decedent and the expenses of the administration of the estate, he may file a petition in the chancery court in which the estate is being administered, for the purpose of borrowing money to be secured by a deed of trust, mortgage, or other encumbrance on the lands of the decedent, except the exempt property or homestead which shall not be so encumbered save to pay an indebtedness which constitutes a lien on such exempt property or homestead, and then not without the consent of the exemptionist. The money, when so borrowed, shall be used to pay said claims and expenses.

HISTORY: Codes, 1930, § 1702; 1942, § 599; Laws, 1930, ch. 14.

§ 91-7-215. Procedure for borrowing.

With such petition the executor or administrator shall file and exhibit to the court a true account of the personal estate, debts due from the deceased, the expenses, and a description of the land to be used as security for the money so borrowed. The court, after service of summons or proof of publication of summons, shall hear and examine the allegations and evidence in support of the petition and the objections to and the evidence against it, if any. If on the hearing, the court be satisfied that the personal estate is insufficient to pay the debts of the deceased and said expenses, and that the land ought to be encumbered for such purposes, it may make a decree for the encumbrance of a part or the whole of the land; and when a part only is decreed to be so encumbered, the decree shall specify what part.

HISTORY: Codes, 1930, § 1703; 1942, § 600; Laws, 1930, ch. 14.

§ 91-7-217. Overplus and contribution.

In the event the land so encumbered should be thereafter sold by foreclosure or otherwise to satisfy the said debt, interest, attorney's fee, trustee's fees, or expenses of such sale, and there shall exist an overplus of money above the debt, interest, attorney's fees, trustee's fees, and expenses of such sale, the overplus shall be distributed among the heirs according to the law of descent, or among the devisees according to the will. The heir or devisee whose land shall be sold may compel all others holding or claiming under such intestate or testator to contribute in proportion to their respective interests, so as to equalize the burden of loss.

HISTORY: Codes, 1930, § 1704; 1942, § 601; Laws, 1930, ch. 14.

§ 91-7-219. Procedure in vacation.

Such decree may be rendered by the presiding chancellor of the court in vacation at any time or place within his district, provided summons has been served on the heirs of the decedent, or devisees under the will of the testator, in the manner provided by law for the service of summons on defendants in chancery for at least ten days before the hearing. In such summons, the time and place of the hearing and the purpose of the proceeding shall be definitely stated; and should the summons be published, such publication shall be completed at least ten days before the hearing.

HISTORY: Codes, 1940, § 1705; 1942, § 602; 1930, ch. 14.

Cross References — Additional powers of chancellor in vacation, see § 9-5-97.

§ 91-7-221. Executor or administrator to make title to land.

If any person sell lands, enter into contract to make title, and die before the title be made, then the person to whom the title was to be made, his heirs or assigns, may petition the court which granted the letters on the estate of the vendor, for an order on the executor or administrator to make title agreeably to the contract. After the parties interested have been cited by summons or by publication, the court shall hear the petition and evidence, and may decree that the executor or administrator make title according to the contract.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (114); 1857, ch. 60, art. 137; 1871, § 1195; 1880, § 2092; 1892, § 1902; 1906, § 2077; Hemingway's 1917, § 1744; 1930, § 1706; 1942, § 603.

Cross References — Form of conveyance by executor or administrator, see § 89-1-67.

JUDICIAL DECISIONS

1. In general.

Contract for sale was not rendered void by the seller's death, though the fact of her death did render her attorney in fact legally incapable of proceeding to carry out the remaining terms of the contract; however, the contract remained a binding agreement that could be enforced against the seller's estate in a probate proceeding. Van Etten v. Johnson (In re Estate of Pickett), 879 So. 2d 467, 2004 Miss. App. LEXIS 67 (Miss. Ct. App. 2004), cert. denied, 2004 Miss. LEXIS 994 (Miss. Aug. 5, 2004).

A deed will not be ordered where it appears that the deceased made a valid sale of the land to another prior to the contract with the petitioner, and of which the petitioner had notice. White v. Gilbert, 39 Miss. 802, 1861 Miss. LEXIS 18 (Miss. 1861).

§ 91-7-223. Executors and administrators may make deeds of conveyance.

The administrator, executor, or testamentary trustee may at any time, by and with the consent of the chancery court or the chancellor in vacation, when the chancellor deems it to the best interests of the estate, execute a deed of conveyance conveying any real property formerly owned by the decedent, where said decedent during his lifetime had executed any bond for title, optional contract, or other instrument conferring upon any party the right to purchase and secure title to said real property, where the execution of such conveyance is necessary in order to carry out the terms, provisions, or stipulation of the said bond for title, optional contract, or other instrument.

HISTORY: Codes, Hemingway's 1917, § 1733; 1930, § 1707; 1942, § 604; Laws, 1912, ch. 143.

§ 91-7-225. Lands may be leased to pay debts.

In case it shall be made to appear to the court that a lease of the lands of the deceased can be made to raise the money necessary for the payment of the debts of the deceased, and that the leasing thereof will be to the interest of the devisees, legatees, heirs, or distributees, the court may, in its discretion, decree the same to be leased. If a lease of the lands, or any part thereof, be decreed, the executor or administrator shall, upon giving the notice as in like case of sale, lease the same at public outcry or privately, as directed by the decree, to the person who will take the lands for the fewest number of years, not exceeding fifteen, and pay, either in cash or at such time as shall be fixed by the decree, the specific sum to be stated therein, equal to the amount of the debts of the deceased to be paid and the expenses of administration. If the lease be on credit, the lessee shall give security for the payment of the sum, to be approved by the executor or administrator.

HISTORY: Codes, 1892, § 1896; 1906, § 2071; Hemingway's 1917, § 1738; 1930, § 1708; 1942, § 605.

Cross References — Action by administrator or executor for rent due deceased, see § 89-7-13.

Lease of farm lands, see § 91-7-171.

JUDICIAL DECISIONS

1. In general.

Under this section [Code 1942, § 605] and sections providing for the sale of lands by a personal representative for the payment of debts in case the personal property is insufficient, it was the duty of a personal representative to pay the taxes on the lands of the estate for the purpose of preserving the lands for the benefit of creditors, as well as for the legatees and distributees. Tonnar v. Wade, 153 Miss. 722, 121 So. 156, 1929 Miss. LEXIS 56 (Miss. 1929).

Approved sale of lease by administrator valid, though administrator a minor. Giglio v. Woollard, 126 Miss. 6, 88 So. 401, 1921 Miss. LEXIS 5 (Miss. 1921).

The lease of a decedent's lands by the administrator, with the consent of the heirs, for the purpose of paying the debts of the estate is valid. Ashley v. Young, 79 Miss. 129, 29 So. 822, 1901 Miss. LEXIS 16 (Miss. 1901).

RESEARCH REFERENCES

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 540 et seq.

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 922 et seq. (lease of property).

CJS.

34 C.J.S., Executors and Administrators §§ 426-429.

§ 91-7-227. Executors and administrators to renew obligation and encumbrances of estate.

The chancery court or the chancellor in vacation, when he deems it to the best interest of the estate, may authorize the administrator, executor, or testamentary trustee to renew for a specified time any obligation of the deceased and, if such obligation be secured by encumbrance on any property, to renew such encumbrance upon such property. If it be shown to the interest of the estate, such chancery court or chancellor in vacation may direct said administrator, executor, or testamentary trustee to obtain money to pay off said obligation or encumbrance and to execute a new obligation or encumbrance to secure said money; and such obligation or encumbrance extended, renewed, or made shall be a valid charge on the estate or the property included in said encumbrance. Such encumbrance, whether renewed, extended, or made, shall not include any other property not embraced in the pre-existing encumbrance.

HISTORY: Codes, Hemingway's 1917, § 1732; 1930, § 1709; 1942, § 606; Laws, 1912, ch. 143.

JUDICIAL DECISIONS

1. In general.

Where note sued on purported to have been executed by defendant as administratrix, it devolved on plaintiff suing her personally to aver in declaration whether note was executed without authority. Orgill Bros. v. Perry, 157 Miss. 543, 128 So. 755, 1930 Miss. LEXIS 340 (Miss. 1930).

Executors and trustees of residue of estate not authorized to borrow money for estate and pledge stock therefor, could not do so under decree of chancery court. Luckett v. Brickell, 115 Miss. 457, 76 So. 502, 1917 Miss. LEXIS 219 (Miss. 1917).

§ 91-7-229. Claims may be sold or compromised.

The court or chancellor in vacation, on petition for that purpose, may authorize the executor or administrator to sell or compromise any claim belonging to the estate which cannot be readily collected; but an order authorizing a sale of any claim shall not be made until after six months from the grant of the letters. The court or chancellor shall specify the terms, conditions, and notice of such sale. In compromising any claim, the executor or administrator may receive property, real or personal, in his name as such, and he shall account for the same as assets of the estate. The executor or administrator shall report, in writing, all sales and compromises to the next term of the court.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 20 (6); 1857, ch. 60, art. 95; 1871, § 1155; 1880, § 2065; 1892, § 1890; 1906, § 2065; Hemingway's 1917, § 1730; 1930, § 1710; 1942, § 607; Laws, 1936, ch. 238.

Cross References — Petitions for authority to compromise claims for wrongful death or injury, see Miss. Uniform Chancery Court Rule 6.11.

RESEARCH REFERENCES

ALR.

Power and responsibility of executor or administrator to compromise claim due estate. 72 A.L.R.2d 191.

Power and responsibility of executor or administrator to compromise claim against estate. 72 A.L.R.2d 243.

Power and responsibility of executor or administrator as to compromise or settlement of action or cause of action for death. 72 A.L.R.2d 285.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 616 et seq.

9A Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 581 et seq. (compromise, release, and settlement of claims due estate).

8 Am. Jur. Legal Forms 2d, Executors and Administrators, §§ 104:160, 104:161, 104:163 (will provision granting authority to settle claims and obligations).

§ 91-7-231. Actions which accrue in administration.

An executor, administrator, or temporary administrator may maintain any action or suit which shall accrue to him in the due course of administration, on any contract which he is authorized to make as such, or for the recovery of personal property, or for injuries thereto.

HISTORY: Codes, 1857, ch. 60, art. 119; 1871, § 1176; 1880, § 2081; 1892, § 1920; 1906, § 2095; Hemingway's 1917, § 1762; 1930, § 1711; 1942, § 608.

Cross References — Suits for rent by executor or administrator, see § 89-7-13.

Institution of suit by administrator, see § 91-7-61.

Actions between corepresentatives, see § 91-7-247.

Suits by foreign executor or administrator, see § 91-7-259.

Requirement that, unless he is licensed to practice law, executor or administrator must retain solicitor, see Miss. Uniform Chancery Court Rules 6.01.

JUDICIAL DECISIONS

1. In general.

Dismissal of an action alleging waste due to the cutting of timber was improperly dismissed on the basis that an estate lacked standing to bring the action since it had no interest therein and no power to bring such an action; the trial court should have allowed a substitution of the heirs as parties to the action. Tolbert v. Southgate Timber Co., 943 So. 2d 90, 2006 Miss. App. LEXIS 868 (Miss. Ct. App. 2006).

An administrator has the right to bring an action to protect the assets of the estate. Estate of Jackson v. Mississippi Life Ins. Co., 755 So. 2d 15, 1999 Miss. App. LEXIS 278 (Miss. Ct. App. 1999).

In an accountant negligence action arising from the accountant's alleged negligence in performing accounting services for an estate, the trial court did not err in allowing plaintiffs other than the executrix to remain in the suit as nominal parties only; by naming the residuary beneficiaries plaintiffs, the executrix was protecting herself against any possible future lawsuits. Wirtz v. Switzer, 586 So. 2d 775, 1991 Miss. LEXIS 597 (Miss. 1991), overruled in part, Upchurch Plumbing, Inc. v. Greenwood Utils. Comm'n, 964 So. 2d 1100, 2007 Miss. LEXIS 495 (Miss. 2007).

Code 1972 § 11-7-13 must be considered in pari materia with Code 1972 §§ 91-7-231, 91-7-233, which authorize only a personal representative to sue to recover the assets of the deceased. Thornton v. Insurance Co. of North America, 287 So. 2d 262, 1973 Miss. LEXIS 1329 (Miss. 1973).

RESEARCH REFERENCES

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 1124 et seq.

CJS.

34 C.J.S., Executors and Administrators § 847 et seq.

Law Reviews.

Arnold, Damages Recoverable in Mississippi for the Wrongful Death of an Adult. 53 Miss. L. J. 637, December, 1983.

Brady, Hedonic damages. 59 Miss. L. J. 495, Fall, 1989.

§ 91-7-233. What actions survive to executor or administrator.

Executors, administrators, and temporary administrators may commence and prosecute any personal action whatever, at law or in equity, which the testator or intestate might have commenced and prosecuted. They shall also be liable to be sued in any court in any personal action which might have been maintained against the deceased.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (111); 1857, ch. 60, art. 119; 1871, § 1176; 1880, § 2078; 1892, § 1916; 1906, § 2091; Hemingway's 1917, § 1758; 1930, § 1712; 1942, § 609.

Cross References — Requirement that, unless he is licensed to practice law, executor or administrator must retain solicitor, see Miss. Uniform Chancery Court Rule 6.01.

Petition for authority to compromise claims for wrongful death or injury, see Miss. Uniform Chancery Court Rule 6.11.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Actions on behalf of estate or beneficiaries.
3. Actions against estate.
4. Limitation of actions.

1. In general.

Administrator of decedent's estate stood in decedent's shoes and could prosecute any action that decedent could have prosecuted; therefore, decedent's arbitration agreement was binding on the administrator to the same extent that it was binding on decedent. Bank of Holly Springs v. Puryear ex rel. Estate of Brown, 309 So. 3d 598, 2020 Miss. App. LEXIS 692 (Miss. Ct. App. 2020).

Code 1972 § 11-7-13 must be considered in pari materia with Code 1972 §§ 91-7-231, 91-7-233, which authorize only a personal representative to sue to recover the assets of the deceased. Thornton v. Insurance Co. of North America, 287 So. 2d 262, 1973 Miss. LEXIS 1329 (Miss. 1973).

This section [Code 1942, § 609] does not operate to authorize an administrator to exercise his decedent's right of election against a spouse's will. Estate of Mullins v. Estate of Mullins, 239 Miss. 751, 125 So. 2d 93, 1960 Miss. LEXIS 350 (Miss. 1960).

This section [Code 1942, § 609] is in derogation of the common law. Southern Package Corp. v. Walton, 196 Miss. 786, 18 So. 2d 458, 1944 Miss. LEXIS 257 (Miss.), cert. denied, 323 U.S. 762, 65 S. Ct. 93, 89 L. Ed. 609, 1944 U.S. LEXIS 247 (U.S. 1944).

This section [Code 1942, § 609] being in derogation of common law must be strictly construed. McNeely v. Natchez, 148 Miss. 268, 114 So. 484, 1927 Miss. LEXIS 55 (Miss. 1927).

Administrator's failure to file letters testamentary waived by failure to object before verdict. Linton v. Skinner, 122

Miss. 613, 84 So. 800, 1920 Miss. LEXIS 460 (Miss. 1920).

2. Actions on behalf of estate or beneficiaries.

Power of attorney prohibited the decedent's attorneys-in-fact from profiting from their role, commingling their funds with hers, or taking ownership of her assets, and during the decedent's lifetime, she could have commenced an action to set aside relatives' joint ownership of certain certificates of deposit; thus, upon her death, her estate became the proper party to commence such an action, and thus the estate had standing to challenge actions taken by a relative that violated the terms of the power of attorney. Swank v. Covington (In re Estate of Hemphill), 186 So. 3d 920, 2016 Miss. App. LEXIS 60 (Miss. Ct. App. 2016).

Survival action provided in the wrongful death statute is an extension of Mississippi's survival statute, Miss. Code Ann. § 91-7-233, which allows personal actions of a decedent to be pursued after his or her death. Caves v. Yarbrough, 991 So. 2d 142, 2008 Miss. LEXIS 617 (Miss. 2008).

Where summary judgment was granted in a daughter, wrongful death complaint, and upon remand the complaint was amended to allege a survival action under Miss. Code Ann. § 91-7-233 with the estate added as a party, the real party in interest joined the suit within a reasonable time after objection pursuant to Miss. R. Civ. P. 17. Methodist Hosp. of Hattiesburg, Inc. v. Richardson, 909 So. 2d 1066, 2005 Miss. LEXIS 74 (Miss. 2005).

Dismissal of an action alleging waste due to the cutting of timber was improperly dismissed on the basis that an estate lacked standing to bring the action since it had no interest therein and no power to bring such an action; the trial court should have allowed a substitution of the heirs as parties to the action. Tolbert v. Southgate Timber Co., 943 So. 2d 90, 2006 Miss. App. LEXIS 868 (Miss. Ct. App. 2006).

Where a decedent was allegedly injured by medication during her life, and allegedly died from it, the estate administrator was to assert both a wrongful death action and a survival action against the drug manufacturer; if the jury found that the drug caused the decedent's death, then the recovery belonged to the wrongful death heirs. If the jury found that the drug did not cause the death, the estate could recover for any personal injuries caused by the drug, and the decedent's ex-husband could recover from the estate amounts he was entitled to under the decedent's holographic instrument. England v. England (In re Estate of England), 846 So. 2d 1060, 2003 Miss. App. LEXIS 473 (Miss. Ct. App. 2003).

Heirs of deceased smoker could not recover damages for injuries suffered by smoker during his lifetime in wrongful death action where jury found that cause of death was unrelated to smoker's lung cancer or chronic obstructive pulmonary disease, but rather was pulmonary embolism caused by complications resulting from treatment for gonorrhea in 1940's, and heirs did not also assert claim under survival statute. Wilks v. American Tobacco Co., 680 So. 2d 839, 1996 Miss. LEXIS 493 (Miss. 1996).

An action for loss of consortium survives the death of the party asserting it, and may be brought as any other action by the executor or administrator or personal representative of the deceased party. Flight Line, Inc. v. Tanksley, 608 So. 2d 1149, 1992 Miss. LEXIS 447 (Miss. 1992).

Nonpossessory equitable claim of intervenor in replevin action survives death of intervenor, whose executor is permitted to revive claim by intervention. Hall v. Corbin, 478 So. 2d 253, 1985 Miss. LEXIS 2274 (Miss. 1985).

Decedent's mother had no standing to bring a wrongful death action under § 11-7-13, even though decedent's will named her as executrix of his estate and sole primary beneficiary, where decedent left surviving him his wife, who was injured in the same accident and died approximately 30 minutes after her husband; a cause of action accrued to the wife even though she survived decedent for only a few minutes, and this cause of action was an asset in her estate, upon which it was entitled to sue pursuant to § 91-7-233; furthermore, decedent's will could not circumvent the wrongful death statute, which created a new and independent cause of action in favor of those named in the statute, and recovery under the statute would become an asset of decedent's estate only if none of the statutory heirs had survived him. Partyka v. Yazoo Development Corp., 376 So. 2d 646, 1979 Miss. LEXIS 2374 (Miss. 1979).

Action under the Federal Fair Labor Standards Act for overtime compensation, liquidated damages, and attorney's fees, survives the death of the employee. Southern Package Corp. v. Walton, 196 Miss. 786, 18 So. 2d 458, 1944 Miss. LEXIS 257 (Miss.), cert. denied, 323 U.S. 762, 65 S. Ct. 93, 89 L. Ed. 609, 1944 U.S. LEXIS 247 (U.S. 1944).

Recovery for pain and suffering of deceased probably caused by alleged negligence of doctor in treating deceased between time of gunshot wound and deceased's death could be had only in suit by personal representative and not by next of kin or heirs at law. Berryhill v. Nichols, 171 Miss. 769, 158 So. 470, 1935 Miss. LEXIS 6 (Miss. 1935).

Action to recover personal property, or to enforce contract, or recover damages for breach of contract, or for injury to person or property survives; pure penalty intended as punishment for misconduct does not survive. J. H. Leavenworth & Son, Inc. v. Hunter, 150 Miss. 245, 116 So. 593, 1928 Miss. LEXIS 127 (Miss. 1928).

Term "personal action" in this section [Code 1942, § 609] means action for recovery of personal property, for breach of contract, or for injury to person or property. Hamel v. Southern R. Co., 108 Miss. 172, 66 So. 426, 1914 Miss. LEXIS 188 (Miss. 1914).

Administratrix may revive suit for personal injuries to decedent and may thereafter sue for his negligent death. Hamel v. Southern R. Co., 108 Miss. 172, 66 So. 426, 1914 Miss. LEXIS 188 (Miss. 1914).

Action for penalty imposed by ordinance for failure to observe regulations in operating ferry did not survive. Hamel v. Southern R. Co., 108 Miss. 172, 66 So. 426, 1914 Miss. LEXIS 188 (Miss. 1914).

The right to sue for trespass to lands upon the death of the owner survives to the executor or administrator, and his heirs cannot sue. Conklin v. Alabama & V. R. Co., 81 Miss. 152, 32 So. 920, 1902 Miss. LEXIS 127 (Miss. 1902).

In a proper case, the administrator may recover exemplary damages of the defendant for assaulting and beating his intestate. Wagner v. Gibbs, 80 Miss. 53, 31 So. 434, 1902 Miss. LEXIS 217 (Miss. 1902).

3. Actions against estate.

The liability of a decedent's widow in a personal action which survived his death is derivative only to her husband's estate, and to the maximum extent only of the amount of her inheritance from that estate, and this section [Code 1942, § 609] does not authorize a suit against the widow in her individual capacity, in an action to establish liability of the estate. State ex rel. Patterson v. Warren, 254 Miss. 314, 182 So. 2d 234, 1966 Miss. LEXIS 1543 (Miss. 1966).

An action to recover misappropriated county funds from members of the board of supervisors is a personal action and upon their deaths survives against their personal representatives. State ex rel. Patterson v. Warren, 254 Miss. 314, 182 So. 2d 234, 1966 Miss. LEXIS 1543 (Miss. 1966).

This statute controls a claim against a decedent's estate for personal injuries sustained in an automobile accident. Powell v. Buchanan, 245 Miss. 4, 147 So. 2d 110, 1962 Miss. LEXIS 526 (Miss. 1962).

A personal representative is liable to suit on a claim arising from the alleged negligence of his decedent, notwithstanding the estate has been declared insolvent. Bullock v. Young, 243 Miss. 146, 137 So. 2d 777, 1962 Miss. LEXIS 326 (Miss. 1962).

Claim against estate to recover amount paid on usurious contract may be probated, and action on such claim is "personal action," which survives death. Chandlee v. Tharp, 161 Miss. 623, 137 So. 540, 1931 Miss. LEXIS 296 (Miss. 1931).

4. Limitation of actions.

Mississippi wrongful death statute, Miss. Code Ann. § 11-7-13, despite the Mississippi Legislature's assigned nomenclature, encompasses all claims, including survival claims, which could have been brought by a decedent, wrongful-death claims, estate claims, and other claims resulting from a tort which proximately caused a death. And where death is not an immediate result of the tort, the limitation periods for the various kinds of claims may not begin to run at the same time. Caves v. Yarbrough, 991 So. 2d 142, 2008 Miss. LEXIS 617 (Miss. 2008).

RESEARCH REFERENCES

ALR.

Validity of exception for specific kind of tort action in survival statute. 77 A.L.R.3d 1349.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 435 et seq.

CJS.

34 C.J.S., Executors and Administrators § 847 et seq.

Law Reviews.

Damages Recoverable in Mississippi for the Wrongful Death of an Adult. 53 Miss. L. J. 637, December, 1983.

Brady, Hedonic damages. 59 Miss. L. J. 495, Fall, 1989.

§ 91-7-235. What actions survive against executor or administrator.

When any decedent shall in his lifetime have committed any trespass, the person injured, or his executor or administrator, shall have the same action against the executor or administrator of the decedent as he might have had or maintained against the testator or intestate, and shall have like remedy as in other actions against executors and administrators. Vindictive damages shall not be allowed, and such action shall be commenced within one year after publication of notice to creditors to probate and register their claims.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (119); 1857, ch. 60, art. 119; 1871, § 1176; 1880, § 2080; 1892, § 1917; 1906, § 2092; Hemingway's 1917, § 1759; 1930, § 1713; 1942, § 610.

Cross References — Service of process on one of several executors or administrators, see § 13-3-53.

Service of process on executor or administrator of nonresident motorist, see § 13-3-63.

Statute of limitations for actions against executors or administrators, see § 15-1-25.

JUDICIAL DECISIONS

1. In general.

The statute does not allow the recovery of punitive damages against an estate because of a prior tort committed by the decedent. Wilbanks v. Gray, 795 So. 2d 541, 2001 Miss. App. LEXIS 103 (Miss. Ct. App. 2001).

This section [Code 1942, § 610] prohibits the award of vindictive damages against an estate of a decedent. Mervis v. Wolverton, 211 So. 2d 847, 1968 Miss. LEXIS 1285 (Miss. 1968).

This section [Code 1942, § 610] does not limit the bringing of action against the estate for decedent's negligence. Jones v. Evans, 247 Miss. 285, 156 So. 2d 742, 1963 Miss. LEXIS 299 (Miss. 1963).

This statute is inapplicable to a claim against a decedent's estate for damages for personal injuries sustained in an automobile accident. Powell v. Buchanan, 245 Miss. 4, 147 So. 2d 110, 1962 Miss. LEXIS 526 (Miss. 1962).

This section [Code 1942, § 610] is in derogation of the common law. Southern Package Corp. v. Walton, 196 Miss. 786, 18 So. 2d 458, 1944 Miss. LEXIS 257 (Miss.), cert. denied, 323 U.S. 762, 65 S. Ct. 93, 89 L. Ed. 609, 1944 U.S. LEXIS 247 (U.S. 1944).

The provision against the allowance of vindictive damages is not applicable to an action by an administrator against a defendant for assaulting and beating his intestate. Wagner v. Gibbs, 80 Miss. 53, 31 So. 434, 1902 Miss. LEXIS 217 (Miss. 1902).

RESEARCH REFERENCES

ALR.

Validity of exception for specific kind of tort action in survival statute. 77 A.L.R.3d 1349.

Claim for punitive damages in tort action as surviving death of tortfeasor or person wronged. 30 A.L.R.4th 707.

§ 91-7-237. Death of party not to abate suit in certain cases.

When either of the parties to any personal action shall die before final judgment, the executor or administrator of such deceased party may prosecute or defend such action, and the court shall render judgment for or against the executor or administrator. If such executor or administrator, having been duly served with a scire facias or summons five days before the meeting of the court, shall neglect or refuse to prosecute or defend the suit, the court may render judgment in the same manner as if such executor or administrator had voluntarily made himself a party to the suit. The executor or administrator who shall become a party shall be entitled to a continuance of the cause until the next term of the court.

HISTORY: Codes, Hutchinson's 1848, ch. 58, art. 1 (47); 1857, ch. 61, art. 49; 1871, § 677; 1880, § 1513; 1892, § 1918; 1906, § 2093; Hemingway's 1917, § 1760; 1930, § 1714; 1942, § 611.

Cross References — Effect of death of party before expiration of statute of limitations, see § 15-1-55.

Non-abatement of suits upon insolvency of estate, see § 91-7-273.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Suits brought by decedent.
3. Suits brought against decedent.

1. In general.

Pursuant to Miss. Code Ann. § 91-7-237, the estate executor stepped into the decedent's shoes in prosecuting an action against the decedent's nephew for unlawfully withdrawing funds; thus, the executor was entitled to the same remedy due the decedent had he been alive at judgment, and the proceeds of suit should have been returned to the estate. Estate of Beckley v. Beckley, 961 So. 2d 707, 2007 Miss. LEXIS 342 (Miss. 2007).

An action for loss of consortium survives the death of the party asserting it, and may be brought as any other action by the executor or administrator or personal representative of the deceased party. Flight Line, Inc. v. Tanksley, 608 So. 2d 1149, 1992 Miss. LEXIS 447 (Miss. 1992).

Where statute was re-enacted by legislature without change after decision holding that term "personal action" is one brought for recovery of personalty, for enforcement of some contract or to recover damages for its breach, or for recovery of damages for commission of injury to person or property, interpretation became part of statute, and could not be changed or modified except by legislature. Catchings v. Hartman, 178 Miss. 672, 174 So. 553, 1937 Miss. LEXIS 259 (Miss. 1937).

Term "personal action" as used in statute providing that, where either of parties to "personal action" shall die before final judgment, executor or administrator may prosecute or defend such action, does not include an action of slander, so as to entitle administratrix to continue the action, since statute, being in derogation of common law, must be strictly construed. Catchings v. Hartman, 178 Miss. 672, 174 So. 553, 1937 Miss. LEXIS 259 (Miss. 1937).

This section [Code 1942, § 611] being in derogation of common law must be strictly construed. McNeely v. Natchez, 148 Miss. 268, 114 So. 484, 1927 Miss. LEXIS 55 (Miss. 1927).

Term "personal action" in this section [Code 1942, § 611] means action for recovery of personal property for breach of contract, or for injury to person or property. McNeely v. Natchez, 148 Miss. 268, 114 So. 484, 1927 Miss. LEXIS 55 (Miss. 1927).

Action for penalty imposed by ordinance for failure to observe regulations in operating ferry did not survive. McNeely v. Natchez, 148 Miss. 268, 114 So. 484, 1927 Miss. LEXIS 55 (Miss. 1927).

2. Suits brought by decedent.

Due process claim that a city unlawfully impounded and forfeited ownership in a dog survived the owner's death to the extent it sought injunctive relieve or damages for the commission of an injury to the person or property. A constitutional challenge to the impoundment ordinance did not survive because it was not a personal action. Estate of Holt v. City of Hattiesburg, 800 Fed. Appx. 228, 2020 U.S. App. LEXIS 3621 (5th Cir. Miss. 2020).

According to established precedent and Miss. Code Ann. § 91-7-237, an executrix's medical malpractice action against a doctor and a medical practice survived a decedent's death and did not have to be recommenced because the executrix complied with Miss. R. Civ. P. 25 as the doctor and medical practice made no suggestion of death upon the record to trigger the ninety-day time requirement set out by the rule; nowhere does Rule 25 state that the substitution of parties is a commencement of a new action, but instead, it is the continuation of a prior action. Harris v. Darby, 17 So. 3d 1076, 2009 Miss. LEXIS 447 (Miss. 2009).

Where a cancer patient died while a medical malpractice suit he filed was pending, and his daughter was substituted as plaintiff and was appointed executrix of his estate, the trial court erred in dismissing the suit for failing to state a claim, because the amended complaint filed by the daughter on behalf of the estate sought recovery for injuries the patient suffered during his lifetime. Necaise v. Sacks, 841 So. 2d 1098, 2003 Miss. LEXIS 137 (Miss. 2003).

In an action to recover for damage to a life estate, the life tenant's sole heir could not be substituted as the plaintiff following the life tenant's death where no estate had been opened for the deceased life tenant and no administrator had been appointed, since the life tenant's sole heir did not automatically become her legal representative on her death (§ 91-7-237). Madison v. Vintage Petroleum, 872 F. Supp. 340, 1994 U.S. Dist. LEXIS 18918 (S.D. Miss. 1994), aff'd, 87 F.3d 1311, 1996 U.S. App. LEXIS 16949 (5th Cir. Miss. 1996), dismissed, 85 F.3d 625, 1996 U.S. App. LEXIS 12907 (5th Cir. Miss. 1996).

Actions for defamation are not personal actions for purposes of survival statute. Caine v. Hardy, 943 F.2d 1406, 1991 U.S. App. LEXIS 22455 (5th Cir. Miss. 1991), cert. denied, 503 U.S. 936, 112 S. Ct. 1474, 117 L. Ed. 2d 618, 1992 U.S. LEXIS 1727 (U.S. 1992).

Action by anesthesiologist against hospital challenging suspension of his privileges was not rendered moot by plaintiff's death, as such parts of claim which alleged wrongful discharge were preserved under state survival statute. Caine v. Hardy, 943 F.2d 1406, 1991 U.S. App. LEXIS 22455 (5th Cir. Miss. 1991), cert. denied, 503 U.S. 936, 112 S. Ct. 1474, 117 L. Ed. 2d 618, 1992 U.S. LEXIS 1727 (U.S. 1992).

Action under the Federal Fair Labor Standards Act for overtime compensation, liquidated damages, and attorney's fees, survives the death of the employee. Southern Package Corp. v. Walton, 196 Miss. 786, 18 So. 2d 458, 1944 Miss. LEXIS 257 (Miss.), cert. denied, 323 U.S. 762, 65 S. Ct. 93, 89 L. Ed. 609, 1944 U.S. LEXIS 247 (U.S. 1944).

Judgment in action for injuries revived in name of wife as executrix held res judicata in her subsequent action for damages sustained by herself and children. Edward Hines Yellow Pine Trustees v. Stewart, 135 Miss. 331, 100 So. 12, 1924 Miss. LEXIS 85 (Miss. 1924).

Dismissal of suit brought by two parties upon death of one of them without motion or other preliminary proceeding will be set aside on proper application and cause reinstated. Merchants' Bank & Trust Co. v. Mississippi Nat'l Bank, 108 Miss. 356, 66 So. 537, 1914 Miss. LEXIS 194 (Miss. 1914).

Administratrix may revive action for personal injuries, and may thereafter sue for negligent death of decedent. Hamel v. Southern R. Co., 108 Miss. 172, 66 So. 426, 1914 Miss. LEXIS 188 (Miss. 1914).

Railroad defendant in suit for personal injury not entitled to move for revocation of letters of administration granted for purpose of bringing suit. Yazoo & M. V. R. Co. v. Jeffries, 99 Miss. 534, 55 So. 354, 1911 Miss. LEXIS 224 (Miss. 1911).

3. Suits brought against decedent.

An action against a member of a board of supervisors for the illegal appropriation of money survives against his estate. State ex rel. Patterson v. Warren, 254 Miss. 314, 182 So. 2d 234, 1966 Miss. LEXIS 1543 (Miss. 1966).

Provision for revival of pending action against deceased defendant's representative does not permit collection by execution of judgment rendered against representative. Dolan v. Tate, 161 Miss. 615, 137 So. 515, 1931 Miss. LEXIS 291 (Miss. 1931).

Suit against deceased defendant may proceed to judgment without probating claim against estate. Dillard & Coffin Co. v. Woollard, 124 Miss. 677, 87 So. 148, 1920 Miss. LEXIS 554 (Miss. 1920).

RESEARCH REFERENCES

ALR.

Death of party to arbitration agreement before award as revocation or termination of submission. 63 A.L.R.2d 754.

Validity of exception for specific kind of tort action in survival statute. 63 A.L.R.2d 1327.

Claim for punitive damages in tort action as surviving death of tortfeasor or person wronged. 30 A.L.R.4th 707.

§ 91-7-239. Executor or administrator not to be sued for ninety days.

A suit or action shall not be brought against an executor or administrator until after the expiration of ninety (90) days from the date of letters testamentary or of administration.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 6 (1); 1857, ch. 60, art. 126; 1871, § 1184; 1880, § 2086; 1892, § 1922; 1906, § 2096a; Hemingway's 1917, § 1764; 1930, § 1715; 1942, § 612; Laws, 1975, ch. 373, § 7, eff from and after January 1, 1976.

Cross References — Statute of limitations in regard to actions against executors and administrators, see § 15-1-25 et seq.

JUDICIAL DECISIONS

1. In general.

Health care providers' claim against the decedent's estate was time-barred because the four-year statute of limitations began to run ninety days after the executor was issued letters of administration, but the providers did not bring their cause of action until after the expiration of the limitations period. Rush Found. Hosp. v. Carlisle, 269 So. 3d 222, 2018 Miss. App. LEXIS 111 (Miss. Ct. App. 2018).

The purpose of this section [Code 1942, § 612] is to allow time to the administrator to examine and understand the condition of the estate, to provide the means of paying debts, if practicable, without suit by collection of assets, and to be advised of any demands against the estate which it may be necessary to defend. Great Southern Box Co. v. Barrett, 231 Miss. 101, 94 So. 2d 912, 1957 Miss. LEXIS 494 (Miss. 1957).

Where an action was brought against the administrator of an estate and two other defendants within four days after the administrator was issued letters, but the administrator did not raise the objection that the action was prematurely brought, the codefendants of the administrator could not raise the question. Great Southern Box Co. v. Barrett, 231 Miss. 101, 94 So. 2d 912, 1957 Miss. LEXIS 494 (Miss. 1957).

Suit could not properly be brought against an administratrix to have funds in a bank adjudged to belong to the plaintiff rather than to the estate until six months after date of letters of administration. Matthews v. Redmond, 202 Miss. 253, 32 So. 2d 123, 1947 Miss. LEXIS 268 (Miss. 1947).

Statute allows four years and six months within which an executor or administrator can be sued. Toler v. Wells, 158 Miss. 628, 130 So. 298, 1930 Miss. LEXIS 50 (Miss. 1930).

Claims maturing before decedent's death are barred, notwithstanding probate, by failure to sue thereon within 4 years and 6 months from grant of letters. Rogers v. Rosenstock, 117 Miss. 144, 77 So. 958, 1918 Miss. LEXIS 158 (Miss. 1918).

Claim for medical services rendered during last illness of intestate not barred until after 4 years and 6 months. Hardenstein v. Brien, 96 Miss. 493, 50 So. 979, 1910 Miss. LEXIS 152 (Miss. 1910).

A petition against the administrator and heirs to subject exempt property owned by decedent in his lifetime to a debt for labor performed, the amount of which has been allowed by the chancery court, is not a suit against an administrator, the proceeding not being a suit on a claim, and the administrator not being a necessary party thereto. Mitchener v. Robins, 73 Miss. 383, 19 So. 103, 1895 Miss. LEXIS 134 (Miss. 1895).

RESEARCH REFERENCES

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 134 et seq.

CJS.

34 C.J.S., Executors and Administrators §§ 890-892.

§ 91-7-241. Suit by or against administrator not to abate.

If any executor or administrator die, resign, or be removed, suits or actions commenced by or against him shall not, for that reason, abate; but the same may be prosecuted by or against his successor, who may make himself a party by proper suggestion or, if he fail to do so, may be brought in by the opposite party by summons or scire facias. Judgments recovered by or against an executor or administrator who has died, resigned, or been removed may be revived for or against his successor in the same way.

HISTORY: Codes, 1857, ch. 60, art. 124; 1871, § 1181; 1880, § 1514; 1892, § 1919; 1906, § 2094; Hemingway's 1917, § 1761; 1930, § 1716; 1942, § 613.

Cross References — Limitation of actions against executor or administrator, see § 15-1-25.

Abatement of suits upon insolvency of estate, see § 91-7-273.

JUDICIAL DECISIONS

1. In general.

The statute applies to administrators appointed in this state only. Bowen v. Bonner, 45 Miss. 10, 1871 Miss. LEXIS 44 (Miss. 1871).

The administrator de bonis non may suggest the death of his predecessor, and ask that a judgment recovered by him be revived; he need not resort to scire facias. Dibble v. Norton, 44 Miss. 158, 1870 Miss. LEXIS 96 (Miss. 1870); Bowen v. Bonner, 45 Miss. 10, 1871 Miss. LEXIS 44 (Miss. 1871).

If a plaintiff die after the rendition of a judgment in his favor, the defendant may appeal before the judgment is revived in favor of the administrator. New Orleans, J., & G. N. R. Co. v. Rollins, 36 Miss. 384, 1858 Miss. LEXIS 109 (Miss. 1858).

RESEARCH REFERENCES

ALR.

Validity of exception for specific kind of tort action in survival statute. 77 A.L.R.3d 1349.

§ 91-7-243. Not bound to plead specially.

Executors, administrators, and temporary administrators shall not be bound to plead specially to any action or suit at law brought against them, but they may give any special matter in evidence under the general issue. An executor or administrator, or the sureties on his bond, shall not be chargeable beyond the amount of the assets of the testator or intestate by reason of any mistake, omission, or false pleading of the executor or administrator.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (105); 1857, ch. 60, art. 125; 1871, § 1183; 1880, § 2089; 1892, § 1923; 1906, § 2097; Hemingway's 1917, § 1765; 1930, § 1717; 1942, § 614.

JUDICIAL DECISIONS

1. In general.

Under the statute, the failure to plead plene administravit does not raise a presumption of assets. Dobbins v. Halfacre, 52 Miss. 561, 1876 Miss. LEXIS 255 (Miss. 1876).

If the administrator elect to plead specially, he will be held to the strictness of pleading. Wren's Adm'r v. Span's Adm'r, 2 Miss. 115, 1834 Miss. LEXIS 22 (Miss. 1834).

§ 91-7-245. Any one interested may defend suit.

Any legatee, heir, distributee, or creditor may be admitted by the court to defend any suit against the executor or administrator of the estate in which he is interested, and the case shall be tried and judgment rendered as if the suit had been defended by the executor or administrator; but judgment shall be given against the party for costs incurred in consequence of his becoming a party, if judgment shall be had against the executor or administrator.

HISTORY: Codes, 1880, § 2090; 1892, § 1924; 1906, § 2098; Hemingway's 1917, § 1766; 1930, § 1718; 1942, § 615.

§ 91-7-247. Actions which accrue between administrators.

When there are two (2) or more administrators of an estate, and one or more of them take all the assets, or the greatest part thereof, and refuse to pay the debts or funeral expenses of the deceased, or to account with the other, the court, on petition of the aggrieved administrator and five (5) days' notice thereof to the other, may make an order requiring the delivery or payment to the aggrieved administrator of the proportionate share of the estate to which he is entitled. To enforce compliance, the court may revoke the letters of the administrator in default, and may fine him not exceeding One Hundred Dollars ($100.00) or imprison him not exceeding three (3) months as for contempt. Any executor being a residuary legatee may proceed in the same way and with like effect against his co-executor to recover his part of the estate.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (110); 1857, ch. 60, art. 120; 1871, § 1177; 1880, § 2082; 1892, § 1921; 1906, § 2096; Hemingway's 1917, § 1763; 1930, § 1719; 1942, § 616.

RESEARCH REFERENCES

Am. Jur.
31 Am. Jur. 2d, Executors and Administrators § 1155 et seq.

CJS.
34 C.J.S., Executors and Administrators § 853.

§ 91-7-249. Executor in his own wrong.

If any person shall alienate or embezzle any of the goods, chattels, personal property, or money of a person deceased, before taking out letters testamentary or of administration, such person shall be liable to the action of creditors and other persons aggrieved, as being executor in his own wrong.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (121); 1857, ch. 60, art. 127; 1871, § 1185; 1880, § 2087; 1892, § 1926; 1906, § 2100; Hemingway's 1917, § 1768; 1930, § 1720; 1942, § 617.

JUDICIAL DECISIONS

1. In general.

Personal liability of administrator for value of cotton taken from land of intestate and sold by him did not preclude him from bringing action against purchaser for value thereof. McGraw v. Robinson Mercantile Co., 95 Miss. 828, 49 So. 260, 1909 Miss. LEXIS 270 (Miss. 1909).

After having jointly converted promissory notes which had never been returned as assets, executors de son tort cannot claim that the notes were assets and only collectible by an administrator to be appointed. Weaver v. Williams, 75 Miss. 945, 23 So. 649, 1898 Miss. LEXIS 45 (Miss. 1898).

Charges paid by executors de son tort cannot be availed of as a set-off against a claim of an estate when unsupported by evidence showing that they were legal demands against the estate. Weaver v. Williams, 75 Miss. 945, 23 So. 649, 1898 Miss. LEXIS 45 (Miss. 1898).

RESEARCH REFERENCES

ALR.

Liability of estate for tort of executor, administrator, or trustee. 82 A.L.R.3d 892.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 34 et seq.

26 Am. Jur. Proof of Facts 2d 663, Surcharge of Executor for Nonpayment of Estate's Tax Liability.

CJS.

34 C.J.S., Executors and Administrators § 1216 et seq.

§ 91-7-251. Liability of executor or administrator of an executor de son tort.

The executor or administrator of an executor de son tort shall be liable to a recovery to the extent of the value of the property received or held by such executor de son tort, if sufficient assets shall have been received to pay the same. Any one who may have become liable as executor de son tort in any other state shall be liable to be sued in this state as such by any creditor, legatee, or distributee.

HISTORY: Codes, 1857, ch. 60, art. 133; 1871, § 1191; 1880, § 2088; 1892, § 1927; 1906, § 2101; Hemingway's 1917, § 1769; 1930, § 1721; 1942, § 618.

RESEARCH REFERENCES

ALR.

Liability of estate for tort of executor, administrator, or trustee. 82 A.L.R.3d 892.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 1029 et seq.

CJS.

34 C.J.S., Executors and Administrators §§ 1217-1219 et seq.

§ 91-7-253. Fiduciary not to use funds; investment by fiduciary bank in time certificates of deposit.

No executor, administrator, guardian, receiver or other fiduciary appointed by or acting pursuant to the authority of any chancery court may borrow or use for his own benefit, directly or indirectly, any of the funds or property of the estate committed or entrusted to him by such court, nor purchase or acquire, directly or indirectly, any interest therein adverse to any creditor or beneficiary of such estate. Nor may he loan the same, or any part thereof, to any parent, brother, sister, son, daughter of, or one in loco parentis to the ward or himself, nor to any attorney or agent representing him or such estate, nor to the wife or any child of such attorney or agent. Nor may any court or chancellor authorize or ratify any such prohibited use, acquisition or loan.

Provided, however, the above prohibitions shall not extend to prohibit the investment by a banking corporation of the funds of an estate committed or entrusted to it in time certificates of deposit, provided such be approved by the chancellor, and the banking corporation shall first secure such certificates of deposit in excess of the portion insured by the Federal Deposit Insurance Corporation, as provided in section 81-5-33, Mississippi Code of 1972.

HISTORY: Codes, 1942, § 619; Laws, 1936, ch. 243; Laws, 1977, ch. 493, eff from and after passage (approved April 15, 1977).

Cross References — Additional provisions governing the conduct of executors, administrators, and other fiduciaries, see Miss. Uniform Chancery Court Rules 6.01 et seq.

Petition for authority to make loans or investments, see Miss. Uniform Chancery Court Rule 6.10.

JUDICIAL DECISIONS

1. In general.

A conservator's wife could be held liable in an action alleging intentional misappropriation of funds and defrauding of the estate, even though the wife asserted that she was only a "scrivener" for her husband and was not responsible for any of the transactions in the conservatorship account, where the wife received payment for keeping the books and received the benefit of direct loans and gifts from the conservatorship monies, she also received the indirect benefit of the use of other items purchased with the monies, she participated in the disbursal of the monies by writing the checks though she did not sign them, and she clearly knew where the monies were going. Bryan v. Holzer, 589 So. 2d 648, 1991 Miss. LEXIS 762 (Miss. 1991).

A finding that a conservator and his wife violated the fiduciary duty to the ward and converted the ward's funds to their own use was supported by evidence that the ward's funds had been used to purchase a van which was used by the conservator and his wife, and that the conservator, his wife, and their children were the recipients of loans and gifts from monies in the conservatorship account, without previous court approval. Bryan v. Holzer, 589 So. 2d 648, 1991 Miss. LEXIS 762 (Miss. 1991).

The Chancellor properly removed an administrator under § 91-7-253, where the administrator admitted that he had spent or lent large sums of funds taken from estate for which he was unable to account. Kelly v. Shoemake, 460 So. 2d 811, 1984 Miss. LEXIS 2019 (Miss. 1984).

Where the testator bequeathed half of his stock to his daughter and the other half to his son for life, with remainder to the daughter and the daughter as executrix surrendered the certificate and obtained two certificates, one of which was issued in the son's name and thereafter the son transferred the certificate to daughter, retaining beneficial interest therein for life, this section [Code 1942, § 619] was not applicable. Maples v. Howell, 217 Miss. 322, 64 So. 2d 364, 1953 Miss. LEXIS 435 (Miss. 1953).

RESEARCH REFERENCES

ALR.

Validity and construction of trust provision authorizing trustee to purchase trust property. 39 A.L.R.3d 836.

Am. Jur.

7 Am. Jur. Pl & Pr Forms (Rev), Conversion, Form 81.3 (complaint, petition, or declaration – for conversion – by conservatee against conservator).

§ 91-7-255. Fiduciary not to transfer negotiable papers.

An executor, administrator, guardian, receiver, or other fiduciary appointed by or acting pursuant to the authority of any chancery court may sell, assign, or transfer any note, bill of exchange, bond, stock certificate, or other negotiable paper belonging to the estate committed or entrusted to him by such court under the standard of care applicable to trustees as set forth in Section 91-8-101 et seq. If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust under the Mississippi Uniform Trust Code.

HISTORY: Codes, 1942, § 620; Laws, 1936, ch. 243; Laws, 2019, ch. 458, § 7, eff from and after July 1, 2019.

Cross References — Additional provisions governing the conduct of executors, administrators, and other fiduciaries, see Miss. Uniform Chancery Court Rules 6.01 et seq.

Mississippi Uniform Trust Code, see § 91-8-101 et seq.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 620] was enacted to protect creditors and those interested in the estate under disposition of the assets by the executor and where there is no claim that the estate is insolvent, or that there are any creditors and that all beneficiaries have not received the specific bequests bequeathed to them, or that abatement among the beneficiaries is needed, this section is inapplicable. Maples v. Howell, 217 Miss. 322, 64 So. 2d 364, 1953 Miss. LEXIS 435 (Miss. 1953).

§ 91-7-257. Repealed.

Repealed by Laws 2019, ch. 458, § 21, eff from and after July 1, 2019.

§ 91-7-257. [Codes, Hutchinson's 1848, ch. 49, art. 1 (93); 1857, ch. 60, arts.

128, 129; 1871, §§ 1186, 1187; 1880, §§ 2010, 2011; 1892, § 1928; 1906, § 2102; Hemingway's 1917, § 1770; 1930, § 1722; 1942, § 621.]

Editor's Notes — Former § 91-7-257 prohibited executors or administrators from removing estate property from the state.

§ 91-7-259. Repealed.

Repealed by Laws, 2020, ch. 406, § 90, eff from and after July 1, 2020.

§ 91-7-259. [Codes, 1857, ch. 60, art. 131; 1871, § 1189; 1880, § 2091; 1892, § 1925; 1906, § 2099; Hemingway's 1917, § 1767; 1930, § 1723; 1942, § 622.]

Editor's Note — Former § 91-7-259 provided that foreign executor or administrator may sue in this state.

§ 91-7-261. Procedures for insolvent estates.

The executor or administrator shall take proper steps speedily to ascertain whether the estate be solvent or insolvent. If both the real and personal estate be insufficient to pay the debts of the deceased, he shall exhibit to the court a true account of all the personal estate, assets of every description, the land of the deceased, and all the debts due from the deceased; and if it appears to the court that the estate is insolvent, it shall make an order for the sale of all the property. The proceeds of such sale and all other assets shall be equally distributed among all the creditors whose claims shall be duly filed and established, in proportion to the sums due and owing to them respectively, the expenses of the last sickness, the funeral, and the administration, including commissions, being first paid. The sale of the land and distribution of the proceeds of the sale shall be subject to the abatement provisions of Section 91-7-90. Before any decree for sale is made, the devisees or heirs shall be made parties to the proceeding.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (103); 1857, ch. 60, art. 98; 1871, § 1158; 1880, § 2054; 1892, § 1939; 1906, § 2113; Hemingway's 1917, § 1781; 1930, § 1724; 1942, § 623; Laws, 2019, ch. 458, § 16, eff from and after July 1, 2019.

Cross References — Reports of insolvency by tax collector, see § 27-49-1 et seq.
Rights of administrator de bonis non in regard to insolvent estates, see § 91-7-71.
Probate of claims, see § 91-7-149 et seq.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Expenses of last illness and funeral.
3. Attorney fees.
4. Jurisdiction.

1. In general.

A year's allowance to a widow and children in insolvent estates is a claim of next priority, is to be paid before creditors, and such allowance may be paid out of exempt personal property, in cases where the exempt property is disposed of by the will of a testator; in cases of intestacy, it descends as provided by statute, and, where administration is not necessary, is not subject to administrative expenses. Mills v. Mills, 279 So. 2d 917, 1973 Miss. LEXIS 1495 (Miss. 1973).

Duty of administrator to collect debts of insolvent estate without order of court. McGraw v. Robinson Mercantile Co., 95 Miss. 828, 49 So. 260, 1909 Miss. LEXIS 270 (Miss. 1909).

2. Expenses of last illness and funeral.

If estate be insolvent, expenses of last illness and funeral are preferred, but in determining solvency, exempt property is not considered. De Baum v. Hulett Undertaking Co., 169 Miss. 488, 153 So. 513, 1934 Miss. LEXIS 66 (Miss. 1934).

Where estate was insolvent, rent due landlord for store occupied by decedent before death, while claim superior to that of general creditors, was not preferred over claims for expenses of last illness, funeral, and administration, where administrator sold goods in store building under court order. Walker v. First Nat'l Bank, 168 Miss. 487, 151 So. 740, 1934 Miss. LEXIS 350 (Miss. 1934).

Expenses of last illness and funeral expenses constitute preference claim over enrolled judgment upon which execution has not been issued and levied. Dabney v. Continental Jewelry Co., 163 Miss. 1, 140 So. 338, 1932 Miss. LEXIS 9 (Miss. 1932).

Claim for expenses of funeral and last sickness not filed for examination pursuant to administrator's notice, though preference claims, not allowed except out of surplus left after payment of filed claims. Merchants' & Farmers Bank v. Kelleher, 119 Miss. 232, 80 So. 697, 1918 Miss. LEXIS 33 (Miss. 1918).

3. Attorney fees.

It was not an abuse of discretion to appoint attorneys representing a decedent's son appointed as temporary administrator of the decedent's estate a fee from the insolvent estate because the attorneys were creditors of the estate who were entitled to payment before any distributions to heirs. Flowers v. Flowers (In re Estate of Flowers), 269 So. 3d 120, 2018 Miss. App. LEXIS 2 (Miss. Ct. App. 2018).

In their cross-appeal, the co-executrixes of an estate that was the center of a long, drawn-out dispute, argued that the chancellor had not followed proper procedure for determining that the estate was insolvent, as stated in Miss. Code Ann. §§ 91-7-261 and 91-7-265. The appellate court ruled that the chancellor had not abused his discretion in denying the payment of attorney's fees from the estate assets. Lynn v. Lynn (In re Will of Lynn), 878 So. 2d 1052, 2004 Miss. App. LEXIS 695 (Miss. Ct. App. 2004).

4. Jurisdiction.

Creditor properly brought its claim before a justice court, and then appealed to the circuit court, even though a debtor's estate was still open, because creditor's action was purely a possessory action. Gandy v. Citicorp, 985 So. 2d 371, 2008 Miss. App. LEXIS 360 (Miss. Ct. App. 2008).

RESEARCH REFERENCES

ALR.

Amount of funeral expenses allowable against decedent's estate. 4 A.L.R.2d 995.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 832 et seq.

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 1401 et seq. (insolvent estates).

CJS.

34 C.J.S., Executors and Administrators § 829 et seq.

§ 91-7-263. Creditor may institute insolvency proceedings.

Any creditor of the decedent may represent to the court that the estate is insolvent, and thereupon the executor or administrator and heirs or devisees shall be summoned to answer whether or not it be insolvent. If it shall be found so, like proceedings shall be had as when an estate is represented to be insolvent by the executor or administrator.

HISTORY: Codes, 1880, § 2055; 1892, § 1940; 1906, § 2114; Hemingway's 1917, § 1782; 1930, § 1725; 1942, § 624.

§ 91-7-265. Decree of insolvency after all property sold.

Where an estate is found to be insolvent after a sale of all the property, real and personal, it may be decreed to be insolvent and be proceeded with accordingly.

HISTORY: Codes, 1880, § 2058; 1892, § 1941; 1906, § 2115; Hemingway's 1917, § 1783; 1930, § 1726; 1942, § 625.

JUDICIAL DECISIONS

1. In general.

In their cross-appeal, the co-executrixes of an estate that was the center of a long, drawn-out dispute, argued that the chancellor had not followed proper procedure for determining that the estate was insolvent, as stated in Miss. Code Ann. § 91-7-261 and 91-7-265. The appellate court ruled that the chancellor had not abused his discretion in denying the payment of attorney's fees from the estate assets. Lynn v. Lynn (In re Will of Lynn), 878 So. 2d 1052, 2004 Miss. App. LEXIS 695 (Miss. Ct. App. 2004).

§ 91-7-267. Publication and claims presented in insolvent estate.

If an estate be declared insolvent after the executor or administrator has made publication to the creditors to present their claims and have them probated and registered, another publication to present claims shall not be necessary. If an estate be declared insolvent before the executor or administrator has made such publication, the court shall order the executor or administrator to make publication, requiring the creditors to present their claims within ninety (90) days and have them probated and registered. Any creditor who shall not register his claim by the day stated in the publication shall be forever barred.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 21 (5); 1857, ch. 60, art. 101; 1871, § 1161; 1880, § 2059; 1892, § 1942; 1906, § 2116; Hemingway's 1917, § 1784; 1930, § 1727; 1942, § 626; Laws, 1975, ch. 373, § 8, eff from and after January 1, 1976.

Cross References — Notice to creditors of estate, see § 91-7-145.
Probate of claims against estate, see §§ 91-7-149 et seq.

§ 91-7-269. Filing, examination, and adjudication of claims in insolvent estate.

When the time for probating and registering claims has elapsed, the court shall cause notice to be inserted for three successive weeks in some newspaper published in the county that at a time fixed the claims will be taken up for examination and adjudication by the court or by the clerk in vacation, as the order may designate, that all claims not required by law to be probated and registered must be filed with the clerk by the day named in the notice, and that all creditors may attend. At the time appointed the court shall examine into the validity of each claim which has been probated and registered and such other claims as may have been filed with the clerk. The executor or administrator or any creditor may object to any claim, and the court shall hear evidence in support of the objection, shall allow any claim that should be allowed, and shall reject in whole or in part any which is in whole or in part not well founded. It shall not be necessary for any creditor to refile with the clerk any claim which has been duly probated and registered within the time and in the manner required by law. All other claims, unless filed with the clerk by the day named in the notice, shall not be allowed; but lawful claims, not required to be probated and registered, which are not filed with the clerk by the day named in the notice shall not be barred as to any surplus that remains after paying in full all claims allowed by the court at the examination and adjudication named in the notice. Provided, however, that in cases where the executor or administrator shall have, prior to the adjudication of insolvency, paid any claim or claims, whether probated and registered or not, such executor or administrator shall have the right by the day named in the notice, to file with the clerk a verified itemized statement of the amount which has been paid thereon, and obtain allowance therefor in the same amount to which the creditor or creditors, whose claim or claims had been so paid, would have been entitled had such creditor filed the claim.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 21 (5); 1857, ch. 60, art. 101; 1871, § 1161; 1880, § 2059; 1892, § 1943; 1906, § 2117; Hemingway's 1917, § 1785; 1930, § 1728; 1942, § 627; Laws, 1926, ch. 146; Laws, 1936, ch. 242.

Cross References — Register of claims to be maintained by chancery clerk, see § 9-5-173.

Docketing proceedings in chancery court, see §§ 9-5-205, 9-5-215.

Balance of mutual dealings on death of one party, see § 11-7-67.

JUDICIAL DECISIONS

1. In general.

Decree allowing or disallowing contested claim against decedent's estate can be rendered only by chancellor having jurisdiction of estate being administered. Trippe v. O'Cavanagh, 203 Miss. 537, 36 So. 2d 166, 1948 Miss. LEXIS 304 (Miss. 1948).

In contest of claim against decedent's estate, only decree allowing or disallowing claim can be rendered, and monetary judgment against administrator for sum for which claim is allowed, if allowed, would be erroneous. Trippe v. O'Cavanagh, 203 Miss. 537, 36 So. 2d 166, 1948 Miss. LEXIS 304 (Miss. 1948).

Under this section [Code 1942, § 627] claims must be refiled with clerk of chancery court for adjudication; judgment as to priority of claim cannot be collaterally attacked. Maxey v. Goolsby, 133 Miss. 554, 98 So. 99, 1923 Miss. LEXIS 171 (Miss. 1923).

RESEARCH REFERENCES

ALR.

Exclusiveness of grounds enumerated in statute providing, under specified circumstances, extension of time for filing claims against decedent's estate. 57 A.L.R.2d 1304.

Appealability of order, of court processing probate jurisdiction court order, allowing or denying tardy presentation of claim to personal representative. 66 A.L.R.2d 659.

Executors and administrators: construction of statutory provisions giving priority on distribution to claims for wages of servants, employees, or the like. 52 A.L.R.3d 940.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 832 et seq.

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 1411 et seq. (settlement of accounts and distribution of insolvent estate).

CJS.

34 C.J.S., Executors and Administrators § 829 et seq.

§ 91-7-271. Distribution of assets in insolvent estate.

When the claims are established and the amount of assets ascertained, the court shall adjudge the pro rata share of each creditor, deducting first the preference claims and deducting from debts not due the legal interest from the time of payment up to the time of their maturity; and the executor or administrator shall distribute all money amongst the creditors, in proportion to their demands. The payment of the claims of the creditors shall be subject to the abatement provisions of Section 91-7-90. A creditor whose pro rata share has been so adjudged, after ten (10) days from the date of the decree ascertaining his share, the same not having been paid, may have execution against the executor or administrator and the sureties on his bond for such sum as may be due him, and costs of execution.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (103); 1857, ch. 60, art. 102; 1871, § 1162; 1880, § 2060; 1892, § 1944; 1906, § 2118; Hemingway's 1917, § 1786; 1930, § 1729; 1942, § 628; Laws, 2019, ch. 458, § 17, eff from and after July 1, 2019.

JUDICIAL DECISIONS

1. In general.

Representative of insolvent estate may in proceeding before chancellor adjudicating claims of creditors set up bar of statute requiring action on claims against decedent to be brought within 4 years from grant of letters. Rogers v. Rosenstock, 117 Miss. 144, 77 So. 958, 1918 Miss. LEXIS 158 (Miss. 1918).

An attorney employed by some of the creditors of an insolvent estate who realizes by his services a fund for distribution among all the creditors cannot have the fund charged with his fees, but must look alone to those who employed him for compensation. Rives v. Patty, 74 Miss. 381, 20 So. 862, 1896 Miss. LEXIS 119 (Miss. 1896).

RESEARCH REFERENCES

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 833.

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 1420 et seq. (judgment or decree of distribution of insolvent estate).

CJS.

34 C.J.S., Executors and Administrators §§ 842-844 et seq.

§ 91-7-273. Suits not to abate on insolvency.

A suit or action which may be pending against an executor or administrator at the time the estate is reported insolvent shall not, on that account, abate, but may be prosecuted to final judgment. The judgment shall constitute a claim against the estate, if probated and registered as other claims, but shall not have priority over general creditors. If any such suit be undetermined when the claims are to be examined and allowed by the court and the distributive shares ascertained and declared, such examination and allowance may be postponed until the suit be finally determined, or the validity of the claims sued on may be determined by the chancery court.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 2 (1); 1857, ch. 60, art. 103; 1871, § 1163; 1880, § 2061; 1892, § 1945; 1906, § 2119; Hemingway's 1917, § 1787; 1930, § 1730; 1942, § 629.

§ 91-7-275. Suit not allowed after decree of insolvency.

A suit or action shall not be brought against an executor or administrator on any claim against the decedent after the estate has been declared insolvent.

HISTORY: Codes, 1880, § 2062; 1892, § 1946; 1906, § 2120; Hemingway's 1917, § 1788; 1930, § 1731; 1942, § 630.

JUDICIAL DECISIONS

1. In general.

This provision bars only actions on contract, not actions in tort. Bullock v. Young, 243 Miss. 146, 137 So. 2d 777, 1962 Miss. LEXIS 326 (Miss. 1962).

A personal representative is liable to suit on a claim arising from the alleged negligence of his decedent, notwithstanding the estate has been declared insolvent. Bullock v. Young, 243 Miss. 146, 137 So. 2d 777, 1962 Miss. LEXIS 326 (Miss. 1962).

§ 91-7-277. Annual accounts.

Every executor or administrator, at least once in each year or oftener if required by the court, shall present under oath an account of his administration, showing the disbursements, every item of which and the amount thereof to be distinctly stated, and it shall also show the receipts of money and from what sources. The failure to account annually shall be a breach of the administration bond, for which it may be put in suit, or the executor or administrator may be removed; but the court may, on application and on cause shown, extend the time for accounting. The court shall examine all such accounts and if satisfied that the account is just and true, it shall decree the same approved and allowed as a correct annual settlement.

There shall be no requirement for filing annual accounts if the requirement of filing accountings is waived in the testator's will. The court or the chancellor may also waive the requirement for filing annual accounts in an intestate estate upon petition to the court by the administrator. Even though the requirement of filing annual accounts is waived in the testator's will or waived by the court or the chancellor upon petition to the court by the administrator in an intestate estate, the court or the chancellor may later order the executor or administrator to file annual accounts upon the petition of a beneficiary or other interested party if the court or the chancellor determines that the filing of annual accounts is necessary or advisable.

HISTORY: Codes, 1857, ch. 60, art. 104; 1871, § 1164; 1880, § 2067; 1892, § 1947; 1906, § 2121; Hemingway's 1917, § 1789; 1930, § 1732; 1942, § 631; Laws, 1960, ch. 217, § 5; Laws, 1968, ch. 306, § 1; Laws, 1996, ch. 400, § 43, eff from and after passage (approved March 19, 1996); Laws, 2019, ch. 458, § 8, eff from and after July 1, 2019.

Cross References — Duty of chancery clerk to keep record of accounts allowed, see § 9-5-137.

Payment of inheritance tax before settlement of executor's accounts, see § 27-9-41.

Final accounts, see § 91-7-291.

Annual accounts by guardians, see § 93-13-67.

Provision that accounts be personally signed and sworn to by executor or administrator, see Miss. Uniform Chancery Court Rule 6.14.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Failure to provide accounting.

1. In general.

Denial of daughters' accounting request was not an abuse of discretion because the chancellor correctly held that under the mother's will, the daughters' had so remote an interest with such a mere expectancy of a future inheritance that they were not entitled to an accounting until that interest vested; neither daughter was entitled to an accounting because there was no showing of waste, loss, mismanagement, or fraud. Flowers v. Estate of Flowers (In re Estate of Flowers), 264 So. 3d 775, 2019 Miss. LEXIS 95 (Miss. 2019).

Denial of daughters' accounting request was not an abuse of discretion because the daughters' had so remote an interest with such a mere expectancy of a future inheritance that they were not entitled to an accounting until that interest vested; chancellors had long been vested with discretionary authority to decide matters of equity, and in the daughters' case against the mother's estate, equity required a denial of the daughters' accounting request for such a remote interest. Flowers v. Estate of Flowers (In re Estate of Flowers), 264 So. 3d 775, 2019 Miss. LEXIS 95 (Miss. 2019).

Daughter did not show that the son had not made a sufficient accounting of estate assets, as required by Miss. Code Ann. § 91-7-277, and, thus, no additional accounting was required regarding them in a case where the daughter sought to challenge the will of the testator, who was the father of the daughter and son. The testator's will did not require the son to furnish any accounting to any court, file an inventory of property received by the beneficiaries, or to report to any court with respect to the duties imposed upon the beneficiaries or regarding the estate administration, and there was not evidence that the estate had been mismanaged. Ellzey v. McCormick, 17 So. 3d 583, 2009 Miss. App. LEXIS 118 (Miss. Ct. App. 2009).

The Chancellor properly removed an administrator under § 91-7-277, where the administrator failed to file sufficiently specific accountings and inventories. Kelly v. Shoemake, 460 So. 2d 811, 1984 Miss. LEXIS 2019 (Miss. 1984).

The requirement of § 91-7-277 that annual accountings be made is mandatory and not simply advisory, and the fact that co-executors' failure to make annual accountings resulted in no loss to the estate was of no consequence. Abernathy v. Smith, 458 So. 2d 691 (Miss. 1984).

Statutory requirement that executor file vouchers for disbursements for annual accounts mandatory. Ridgeway v. Jones, 125 Miss. 22, 87 So. 461, 1921 Miss. LEXIS 103 (Miss. 1921).

Executor may not pay claims not probated and allowed. Ridgeway v. Jones, 125 Miss. 22, 87 So. 461, 1921 Miss. LEXIS 103 (Miss. 1921).

Expenditures for funeral expenses and monument may be allowed if reasonable. Ridgeway v. Jones, 125 Miss. 22, 87 So. 461, 1921 Miss. LEXIS 103 (Miss. 1921).

2. Failure to provide accounting.

Finding against the executrix was appropriate because she mismanaged the decedent's estate and was thus accountable for her actions. She further failed to provide an accounting as required by Miss. Code Ann. § 91-7-277. Frazier v. Shackelford (In re Estate of Carter), 912 So. 2d 138, 2005 Miss. LEXIS 662 (Miss. 2005).

RESEARCH REFERENCES

ALR.

Application of dead man's statute in proceeding involving account of personal representative. 2 A.L.R.2d 349.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 903.

CJS.

34 C.J.S., Executors and Administrators § 1038.

Law Reviews.

Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March, 1982.

§ 91-7-279. Repealed.

Repealed by Laws, 2019, ch. 458, § 22, eff from and after July 1, 2019.

§ 91-7-279. [Codes, 1892, § 1948; 1906, § 2122; Hemingway's 1917, § 1790; 1930, § 1733; 1942, § 632; Laws, 1960, ch. 217, § 6; Laws, 1966, ch. 324, § 1, eff from and after passage (approved March 2, 1966).]

Editor's Notes — Former § 91-7-279 provided the format for filing vouchers with the court.

§ 91-7-281. Attorney's fees allowable.

In annual and final settlements, the executor, administrator, or guardian shall be entitled to credit for such reasonable sums as he may have paid for the services of an attorney in the management or in behalf of the estate, if the court be of the opinion that the services were proper and rendered in good faith. Where the executor, administrator, or guardian acts also as attorney, the court may allow such executor, administrator, or guardian credit for his reasonable compensation as attorney in lieu of his compensation as executor, administrator, or guardian.

HISTORY: Codes, 1892, § 1957; 1906, § 2131; Hemingway's 1917, § 1799; 1930, § 1734; 1942, § 633; Laws, 1882, p. 113; Laws, 1928, ch. 153.

Cross References — Attorney's fees in guardianship proceedings, see § 93-13-79.

Petitions for allowance of attorney's fees, see Miss. Uniform Chancery Court Rule 6.13.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Amount of fees.
3. Executor, administrator, or guardian acting as attorney.

1. In general.

Attorney's fees are not authorized where services are rendered for sole benefit of individual interested in estate; administratrix should not have been allowed attorney's fees, to be paid out of estate, where she was the only creditor of estate and record revealed that only pleading for motion filed by her not in furtherance of recovering her claim against estate was payment of outstanding funeral bill. Braxton v. Johnson, 514 So. 2d 1232 (1987).

The payment of attorneys' fees is an expense of the administration of a decedent's estate, and since such fees are incurred after testator's death, they do not have to be probated; the testator may waive the testatrix's duty to account, but upon a charge of the devisees of mismanagement by the executrix, the chancery court may properly require an accounting, with the result that an executrix may act at her peril in paying attorneys' fees without court approval. Harper v. Harper, 491 So. 2d 189, 1986 Miss. LEXIS 2508 (Miss. 1986).

Although attorney's fees are the personal obligation of the administrator or executor, they may be paid out of the estate as administration expenses. Scott v. Hollingsworth, 487 So. 2d 811, 1986 Miss. LEXIS 2438 (Miss. 1986).

The supreme court would not require an estate to pay for legal services rendered by an attorney in the interest of the executrix in her individual capacity and which was of no benefit to the estate itself. Ruffin v. Burkhalter, 238 Miss. 358, 118 So. 2d 357, 1960 Miss. LEXIS 413 (Miss. 1960).

Attorney's fees in the management of statutory estates are not a charge upon the estate itself, but are personal obligations of the administrator or executor or guardian, and an allowance for attorney's fees must be done on the request or petition of the administrator or executor or guardian and not on the direct petition of the attorney himself. Hutton v. Gwin, 188 Miss. 763, 195 So. 486, 1940 Miss. LEXIS 55 (Miss. 1940).

Where the testator prescribes that his wife should be the guardian of the person and estate of his minor son until he should become twenty-one years of age and should give a bond as guardian effective during that time, and that after the minor had reached his majority the guardian should thereupon become trustee and should furnish bond as such trustee until the son should attain thirty-one years old, at which time the balance of the estate was to be distributed, a period of minority constituted a statutory guardianship and attorney's fees for services rendered during that period could not be allowed on the direct petition of the attorney himself. Hutton v. Gwin, 188 Miss. 763, 195 So. 486, 1940 Miss. LEXIS 55 (Miss. 1940).

Attorneys' fees incurred by the personal representative in the administration of an estate in his custody are his personal obligations, for which he may be reimbursed if the court be of the opinion that the services were necessary and rendered in good faith. Clarksdale Hospital v. Wallis, 187 Miss. 834, 193 So. 627, 1940 Miss. LEXIS 238 (Miss. 1940).

Allowance for attorneys' fees is unauthorized where services are rendered for sole benefit of an individual, or group of individuals, interested in the estate, as against the others interested. Clarksdale Hospital v. Wallis, 187 Miss. 834, 193 So. 627, 1940 Miss. LEXIS 238 (Miss. 1940).

Where hospital's claim to legacy was against the interest of all the other legatees and devisees under a will, and its successful termination resulted in decreasing their claims, the hospital was not entitled to reasonable attorneys' fees incurred in defending its rights to the legacy, notwithstanding that the decision as to the validity of the bequest involved a construction of the will which was of interest to all concerned. Clarksdale Hospital v. Wallis, 187 Miss. 834, 193 So. 627, 1940 Miss. LEXIS 238 (Miss. 1940).

Attorney's fees held personal debts of administrator, and not of estate. Reedy v. Allen, 181 Miss. 471, 179 So. 569, 1938 Miss. LEXIS 89 (Miss. 1938).

Ordinarily administrator is personally liable to attorney, and entitled, in connection with annual and final settlement, to credit for reasonable attorney's services on behalf of estate if court thinks they were proper and in good faith. Reedy v. Allen, 181 Miss. 471, 179 So. 569, 1938 Miss. LEXIS 89 (Miss. 1938).

Chancellor had no authority to allow attorney's fees where there was no evidence of employment contract. Reedy v. Allen, 181 Miss. 471, 179 So. 569, 1938 Miss. LEXIS 89 (Miss. 1938).

Order allowing attorney's fee in ex parte proceeding for services rendered predecessor of present administratrix and trustee could not be sustained on ground administratrix should have objected to filing petition, where neither petition nor proof showed any power in administratrix or trustee to bind estate, and it was not shown that predecessor was insolvent or out of state. Reedy v. Allen, 181 Miss. 471, 179 So. 569, 1938 Miss. LEXIS 89 (Miss. 1938).

Where will empowered executor and trustee to employ persons necessary to manage trust estate, attorney's fees could be made charge against trust estate. Gwin v. Fountain, 159 Miss. 619, 126 So. 18, 132 So. 559, 1930 Miss. LEXIS 354 (Miss. 1930).

Ordinarily debts contracted by administrator are only personal obligations, and this is especially true of attorneys' fees. Howell v. Myer, 105 Miss. 771, 63 So. 233, 1913 Miss. LEXIS 261 (Miss. 1913).

Statute is intended to prevent necessity of suit by attorney against administrator to establish claim for services to estate; statute has no reference to claim which attorney seeks to enforce over administrator's protest. Murphy v. Harris, 93 Miss. 286, 48 So. 232, 1908 Miss. LEXIS 166 (Miss. 1908).

The funeral expenses of decedent and an administrator's attorney's fees are not debts against him, and the administrator may pay them with the proceeds of a life insurance policy which is exempt from liability for his debts. Dobbs v. Chandler, 84 Miss. 372, 36 So. 388, 1904 Miss. LEXIS 43 (Miss. 1904).

2. Amount of fees.

The chancellor did not abuse his discretion by not allowing additional attorneys fees where the executrix was found in civil and criminal contempt for failing to abide by a previous court order and was subsequently jailed, and where the executrix received legal advice in connection with the contempt action from the same counsel whom she retained on behalf of the estate and thus did not have the purpose of benefiting the estate. In re Estate of Collins v. Collins, 742 So. 2d 147, 1999 Miss. App. LEXIS 251 (Miss. Ct. App. 1999).

Lawyer should submit time sheet to chancellor listing hours spent serving estate and fee normally charged for such service when pursuing attorneys fees under § 91-7-281; attorney's fees are not recoverable from estate for services performed before appointment of administrator. Braxton v. Johnson, 514 So. 2d 1232 (1987).

The chancellor did not abuse his discretion in allowing the payment of attorney's fees for services rendered prior to the date the decedent's estate could and should have been closed, nor in surcharging the executrix for the balance of the legal fees incurred after that date. Harper v. Harper, 491 So. 2d 189, 1986 Miss. LEXIS 2508 (Miss. 1986).

Award of $1500 as fees for attorney retained by an estate valued in excess of $229,000 was not so inadequate as to amount to an abuse of the chancellor's discretion. Scott v. Hollingsworth, 487 So. 2d 811, 1986 Miss. LEXIS 2438 (Miss. 1986).

Where the proper management, handling, and preservation of funds of a decedent's estate in the sum of $13,750, derived from condemnation proceedings, required the executor and life tenant to seek the aid of the chancery court and to submit the matter to its jurisdiction for proper decrees in regard to the disposition of the funds, the allowance of an attorney's fee in the sum of $1,000 was justified. Bradley v. Bradley, 185 So. 2d 655, 1966 Miss. LEXIS 1518 (Miss. 1966).

Allowance of compensation and attorney's fees to an administrator within the limits prescribed by statute is a matter addressed to the sound discretion of the chancery court, and the supreme court will not interfere with the exercise of that discretion except in cases of its manifest and flagrant abuse. Schwander v. Rubel, 221 Miss. 875, 75 So. 2d 45, 1954 Miss. LEXIS 603 (Miss. 1954).

Chancery court's allowance for attorney's fees which was slightly less than four per cent of estate, held not abuse of discretion. King v. Wade, 175 Miss. 72, 166 So. 327, 1936 Miss. LEXIS 8 (Miss. 1936).

Instead of paying attorneys and asking credit therefor, executrix may ask court to fix fees. Brown v. Franklin, 166 Miss. 899, 145 So. 752, 1933 Miss. LEXIS 328 (Miss. 1933).

Amount allowable as attorney's fee for services rendered in administration of estate rests in sound discretion of chancery court. Brown v. Franklin, 166 Miss. 899, 145 So. 752, 1933 Miss. LEXIS 328 (Miss. 1933).

Time is not the only element involved in fixing attorney's fee for services rendered executrix, since skill, responsibility, and amount involved must also be considered. Brown v. Franklin, 166 Miss. 899, 145 So. 752, 1933 Miss. LEXIS 328 (Miss. 1933).

Opinions of attorneys concerning propriety of fee for services rendered to executrix were not binding on chancery court, which might act on its own knowledge. Brown v. Franklin, 166 Miss. 899, 145 So. 752, 1933 Miss. LEXIS 328 (Miss. 1933).

Allowance of attorney's fee of $750 for services rendered executrix in estate amounting to $29,104.95, where litigation was carried to supreme court, held not abuse of discretion. Brown v. Franklin, 166 Miss. 899, 145 So. 752, 1933 Miss. LEXIS 328 (Miss. 1933).

3. Executor, administrator, or guardian acting as attorney.

As long as no duplication of services is shown, an executor is not prevented from seeking payment for services rendered purely in his fiduciary capacity that may not necessarily involve legal work, while, at the same time, seeking additional compensation for other work of a purely legal nature in lieu of payment for those other discrete services as the fiduciary. Thomas v. Evans (In re Estate of Thomas), 740 So. 2d 332, 1999 Miss. App. LEXIS 117 (Miss. Ct. App. 1999).

There is no prohibition in this section that would prevent a fiduciary who is also an attorney from petitioning for some part of his itemized services to be paid under § 91-7-299, where his right to compensation would not necessarily be commensurate with prevailing legal fees; nor is there a prohibition for that same fiduciary, as to those separately identified services that were unquestionably performed in his capacity as an attorney, seeking compensation under this section, in lieu of being paid for those particular services under § 91-7-299. Thomas v. Evans (In re Estate of Thomas), 740 So. 2d 332, 1999 Miss. App. LEXIS 117 (Miss. Ct. App. 1999).

RESEARCH REFERENCES

ALR.

Allowance of fees for guardian ad litem appointed for infant defendant, as costs. 30 A.L.R.2d 1148.

Right to allowance out of estate of attorneys' fees incurred in attempt to establish or defeat will. 40 A.L.R.2d 1407.

Right of executor or administrator to extra compensation for legal services rendered by him. 65 A.L.R.2d 809.

Personal liability of executor or administrator for fees of attorney employed by him for the benefit of the estate. 13 A.L.R.3d 518.

Amount of attorneys' compensation in matters involving guardianship and trusts. 57 A.L.R.3d 550.

Amount of attorneys' compensation in proceedings involving wills and administration of decedents' estates. 58 A.L.R.3d 317.

Liability of estate for legal services of attorney employed by estate attorney without consent of executor or administrator. 83 A.L.R.3d 1160.

Award of attorneys' fees out of trust estate in action by trustee against cotrustee. 24 A.L.R.4th 624.

Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators §§ 428, 430.

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 1451 et seq. (compensation and allowances).

CJS.

34 C.J.S., Executors and Administrators § 1072.

Law Reviews.

1978 Mississippi Supreme Court Review: Torts. 50 Miss. L. J. 137, March, 1979.

§ 91-7-283. Defaulters to be listed and cited.

Unless the court or chancellor has, by order entered on the minutes, designated another annual term for that purpose, it shall be the duty of the clerk at the first term of the chancery court of his county in each year to make up a complete and impartial list of all executors and administrators and guardians who have failed to present and settle their accounts within the year preceding. In each and every such case, the clerk shall enter the same on the motion docket and thereby move the court for an order on the defaulter; and the court shall, in each and every such case, order a citation to be issued for the defaulter and for the surety or sureties on his bond, returnable forthwith or at the next term of court. On the return thereof, unless sufficient cause be shown for such failure and that the same was not the result of negligence or contumacy, the court shall proceed against the delinquent executor, administrator, or guardian for a contempt, and may also remove him from office. If there be no such defaulter, the clerk shall so report and obtain an order reciting his said report to that effect, which order shall be entered on the minutes of the term. If there be any defaulter and the clerk shall fail to fully prepare the list and to enter the motions herein required, he shall not be entitled to any allowance for attendance on the term nor to any annual compensation for ex officio services to the court. Any allowance by the court contrary to the terms of this section may nevertheless be recovered from the said clerk on his bond by the state tax commission, or by any other office similarly empowered, for the benefit of the county treasury; in addition to which, the clerk shall be liable on his bond at the suit of any party in interest who has been damaged in any case by the said failure of the clerk.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (94); 1857, ch. 60, art. 105; 1871, § 1165; 1880, § 2068; 1892, § 1949; 1906, § 2123; Hemingway's 1917, § 1791; 1930, § 1735; 1942, § 634.

Editor's Notes — Section 27-3-4 provides that the terms " 'Mississippi State Tax Commission,' 'State Tax Commission,' "Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Docketing in matters testamentary, see § 9-5-203.

JUDICIAL DECISIONS

1. In general.

Supreme court will not interfere with action of chancery court in removing trustee on its own motion, unless palpably unjust. Nutt v. State, 96 Miss. 473, 51 So. 401, 1910 Miss. LEXIS 171 (Miss. 1910).

§ 91-7-285. Process for derelict fiduciary.

Whenever it shall appear of record, or otherwise, that any executor, administrator, guardian, receiver, or fiduciary appointed by any chancery court is derelict in the performance of any duty required of him by law or the orders of the court or chancellor, or is liable to be punished or removed for any cause prescribed by law, then such court or the chancellor in vacation may, on the application of any interested party or of his or its own motion, order a citation for such executor, administrator, guardian, receiver, or other fiduciary, as the case may be, to be issued by the clerk of the court in which such cause or matter is pending, returnable forthwith or at such time and place, in term time or vacation, as may be specified in such order, to appear and show cause why he should not be removed or punished for contempt, either or both, as may be directed in such order. The citation shall be directed to the sheriff of the county of the residence of such fiduciary, if known to the clerk; otherwise, it shall be directed to the sheriff of the county where such matter or cause is pending, and shall be executed without advance payment of fees.

HISTORY: Codes, 1942, § 635; Laws, 1936, ch. 239.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Notice.

1. In general.

In a father's petition to remove a conservator under Miss. Code Ann. § 91-7-285 and to set aside an allegedly fraudulent conveyance, a chancery court erred by dismissing based on a lack of standing because the father was an interested party due to the fact that his daughters were beneficiaries under their mother's will. Peyton v. Longo (In re Davis), 954 So. 2d 521, 2007 Miss. App. LEXIS 251 (Miss. Ct. App. 2007).

An administrator's failure to file sufficiently specific accountings and inventories and his admission that he had spent or lent large sums of funds taken from the estate for which he was unable to account formed a sufficient basis for the chancellor to remove him, under § 91-7-285, as executor of the estate. Kelly v. Shoemake, 460 So. 2d 811, 1984 Miss. LEXIS 2019 (Miss. 1984).

2. Notice.

A conservator is entitled to notice and a hearing prior to his removal. Jackson v. Jackson, 732 So. 2d 916, 1999 Miss. LEXIS 54 (Miss. 1999).

§ 91-7-287. Publication of process for defaulter.

If the citation be returned unexecuted because such fiduciary cannot be found after diligent search by the sheriff to whom it is directed, then the clerk shall make and file among the papers in the cause an affidavit stating such information as he may have been able to ascertain after diligent inquiry concerning the whereabouts and post office address of such fiduciary. If by such affidavit it shall appear that the whereabouts of such fiduciary is unknown to the clerk or that he is a nonresident of, or absents himself from, this state, then the court or chancellor shall make an order directing the issuance and publication of an alias citation for such fiduciary to appear and show cause why he should not be removed, at a time and place specified therein, not less than thirty days from the date of such order. The sheriff of the county where such matter or cause is pending shall thereupon make publication of such citation by posting a true copy thereof at three public places in his county, one of which shall be at the courthouse, not less than twenty-one days before the return day thereof, and shall make return of the citation showing such publication and the date and places where such copies were posted. If the clerk's affidavit shall show the post office address of such fiduciary, then the clerk shall, at the time of issuing such alias citation for publication, mail postage prepaid a true copy thereof to him at such address and note the fact on his general docket in the same manner and with the same effect as in other like cases. On the return of such alias citation, executed by publication as aforesaid, the court or chancellor shall be as fully empowered to proceed as if such fiduciary had been personally served in this state.

HISTORY: Codes, 1942, § 636; Laws, 1936, ch. 239.

§ 91-7-289. Hearing for derelict fiduciary.

If on the return day it shall appear that the citation has been served in this state, or publication made in the manner required by Section 91-7-287, the court or chancellor may proceed to hear the matter, and may remove or punish such fiduciary, either or both, or make such other order therein as may seem just and proper; or the court or chancellor may continue the matter for further hearing and final determination to such time and place as may be designated in the order of continuance.

HISTORY: Codes, 1942, § 637; Laws, 1936, ch. 239.

§ 91-7-291. Final accounts.

When the estate has been administered by payment of the debts and the collection of the assets, it shall be the duty of the executor or administrator, unless the court or chancellor, on cause shown, shall otherwise order, to make and file a final settlement of the administration by making out and presenting to the court, under oath, his final account, which shall contain a distinct statement of all the balances of the annual accounts, either as debits or credits, all other charges and disbursements, amounts received and not contained in any previous annual account, and a statement of the kind and condition of all assets in his hands. There shall be no requirement for filing a final account if the requirement of filing accountings is waived in the testator's will. The court or the chancellor may also waive the requirement for filing a final account in an intestate estate upon petition to the court by the administrator. Even though the requirement of filing accountings or the final account is waived in the testator's will or waived by the court or the chancellor upon petition to the court by the administrator in an intestate estate, the court or the chancellor may later order the executor or administrator to file a final account upon the timely petition of a beneficiary or other interested party if the court or the chancellor determines that the filing of a final account is necessary or advisable and the petition is timely filed.

HISTORY: Codes, 1857, ch. 60, art. 106; 1871, § 1166; 1880, § 2069; 1892, § 1950; 1906, § 2124; Hemingway's 1917, § 1792; 1930, § 1736; 1942, § 638; Laws, 1960, ch. 217, § 7; Laws, 2019, ch. 458, § 9, eff from and after July 1, 2019.

Cross References — Payment of income tax as prerequisite to approval of final account, see § 27-7-69.

Payment of estate taxes as prerequisite to approval of final account, see § 27-9-41.

Annual accounts, see § 91-7-277.

Reopening of accounts after final accounting, see § 91-7-309.

Production of vouchers in guardianship proceedings, see § 93-13-73.

Requirement that account be personally signed and sworn to by executor or administrator, see Miss. Uniform Chancery Court Rule 6.14.

JUDICIAL DECISIONS

1. In general.

In a proceeding by a widow to reopen the estate of her deceased husband more than two years after entry of a final decree on the ground that the final account had never been filed and that the final decree was therefore a nullity, the trial court properly denied the petition where the transcript was a part of the record and it indicated that, although the final account had not be stamped "Filed" until three years later, there was no dispute that it had been presented to the court, that it had been a part of the record on presentation of same, and that the decree had been based upon said account and evidence heard for the approval thereof, and where there was no specific charge of fraud against the executor which would constitute a bar to the statute of limitations. Byrd v. Page, 384 So. 2d 1038, 1980 Miss. LEXIS 2015 (Miss. 1980).

Chancellor in vacation may approve executor's final account. United States Fidelity & Guaranty Co. v. State, 110 Miss. 16, 69 So. 1007, 1915 Miss. LEXIS 20 (Miss. 1915).

Administratrix de bonis non entitled to

allowance for premium on special bond executed to collect money for land sold by predecessor under order of court. Davis v. Blumenberg, 107 Miss. 432, 65 So. 503, 1914 Miss. LEXIS 102 (Miss. 1914).

In a suit by a distributee to compel an accounting by the surviving executor it is proper upon the latter's application to make a personal representative of the deceased executor a party to the proceeding. Owens v. Owens' Estate, 84 Miss. 673, 37 So. 149, 1904 Miss. LEXIS 95 (Miss. 1904).

Where executors deposited money collected in their own bank, where it remained for ten years credited to them as guardians, when they were not guardians, and rendered no accounts for more than two years, in the meantime lending money to the distributees at interest and selling them property, taking interest-bearing notes therefor, they are chargeable with interest at the legal rate during the time the money was in the bank. Owens v. Owens' Estate, 84 Miss. 673, 37 So. 149, 1904 Miss. LEXIS 95 (Miss. 1904).

Where executors without excuse left money due the estate in the hands of the debtor for nearly fifteen years, not collecting it until compelled to do so in a proceeding for an accounting, they were chargeable with interest. Owens v. Owens' Estate, 84 Miss. 673, 37 So. 149, 1904 Miss. LEXIS 95 (Miss. 1904).

RESEARCH REFERENCES

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 878 et seq.

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 1101 et seq. (final account).

CJS.

34 C.J.S., Executors and Administrators § 968 et seq.

§ 91-7-293. Names of interested parties to be stated.

The executor or administrator shall file with his final account a written statement, under oath, of the names of the heirs or devisees and legatees of the estate, so far as known, specifying particularly which, if any, are under the age of twenty-one years, of unsound mind, or convict of felony; the places of residence of each and their post-office address if they be nonresidents or, if the post-office address be unknown, the statement must aver that diligent inquiry has been made to learn the same without avail and giving the names and places of residence of the guardians of all who have guardians, so far as known.

HISTORY: Codes, 1892, § 1951; 1906, § 2125; Hemingway's 1917, § 1793; 1930, § 1737; 1942, § 639.

Cross References — Requirement that account be personally signed and sworn to by executor or administrator, see Miss. Uniform Chancery Court Rule 6.14.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Applicability.

1. In general.

Administratrix's duty to protect estate assets required administratrix to contest all claims against estate that may properly and in good faith be contested and to use reasonable diligence to ascertain potential heirs, and to file names of heirs in final account. Shepard v. Jones by & Through Jones (In re Estate of Stowers), 678 So. 2d 660, 1996 Miss. LEXIS 329 (Miss. 1996).

A chancery court did not have jurisdiction to hear a will contest where the executor failed to properly designate the beneficiaries as necessary parties, since the "interested and necessary parties" were not timely noticed and properly joined in the lawsuit; the chancellor should have joined all necessary and proper parties before exercising jurisdiction. Padron v. Martell (In re Estate of McClerkin), 651 So. 2d 1052, 1995 Miss. LEXIS 135 (Miss. 1995).

In an action to probate a will, the chancellor erred in sustaining the executor's and beneficiaries' motions to dismiss a caveat against probate filed by will contestants on the ground that the will was not contested within 2 years as required by § 91-7-23 where the beneficiaries were not listed as interested parties on the petition to probate the will, since the beneficiaries were necessary parties entitled to notice of the action. Padron v. Martell (In re Estate of McClerkin), 651 So. 2d 1052, 1995 Miss. LEXIS 135 (Miss. 1995).

An administratrix perpetrated a fraud on the court where she intentionally chose not to reveal the existence of a potential heir to the court, relying on her and her attorney's determination that an alleged illegitimate daughter of the decedent was not an heir, where the administratrix, who was the decedent's widow, claimed to be the sole heir at law and benefited from her silence regarding the existence of the illegitimate daughter. Smith v. Estate of King, 579 So. 2d 1250, 1991 Miss. LEXIS 250 (Miss. 1991).

An administratrix is under an affirmative duty to disclose to the court the existence of known potential heirs and claimants. Smith v. Estate of King, 501 So. 2d 1120, 1987 Miss. LEXIS 2287 (Miss. 1987).

This section [Code 1942, § 639], while it prescribed who are necessary parties to the final account of an administrator, does not preclude as proper parties those having an interest in the net amount to be distributed by the administrator. Stone v. Townsend, 190 Miss. 547, 1 So. 2d 237, 1941 Miss. LEXIS 81 (Miss. 1941).

Judgment creditors of the heirs of an intestate were proper parties to a proceeding involving the final account of the administrator. Stone v. Townsend, 190 Miss. 547, 1 So. 2d 237, 1941 Miss. LEXIS 81 (Miss. 1941).

2. Applicability.

Because it did not appear that there were any known heirs, legatees, or devisees besides the executor, he was not required by statute to make a diligent inquiry to learn addresses. The fact that appellant and/or his daughters had filed a claim against the estate did not make them heirs, legatees, or devisees; thus, this statute did not apply. Peyton v. Longo (In re Estate of Davis), 315 So. 3d 1080, 2021 Miss. App. LEXIS 157 (Miss. Ct. App. 2021).

Because it did not appear that there were any known heirs, legatees, or devisees besides the executor, he was not required by statute to make a diligent inquiry to learn addresses. The fact that appellant and/or his daughters had filed a claim against the estate did not make them heirs, legatees, or devisees; thus, this statute did not apply. Peyton v. Longo (In re Estate of Davis), 315 So. 3d 1080, 2021 Miss. App. LEXIS 157 (Miss. Ct. App. 2021).

RESEARCH REFERENCES

Law Reviews.

Symposium on Mississippi Rules of Civil Procedure: Pretrial Procedure, Applicability of Rules, and Jurisdiction and Venue – Rules 16, 81 and 82. 52 Miss. L. J. 105, March, 1982.

§ 91-7-295. Summons or publication for final account.

The final account so presented, with the statement as to parties, shall remain on file, subject to the inspection of any person interested. Summons shall be issued or publication be made for all parties interested, as in other suits in the chancery court, to appear at a term of the court, or before the chancellor in vacation, not less than thirty (30) days from the service of the summons or the completion of the publication, and show cause, if any they can, why the final account of the executor, administrator, or guardian should not be allowed and approved.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 20 (12); 1857, ch. 60, art. 106; 1871, § 1167; 1880, § 2069; 1892, § 1952; 1906, § 2126; Hemingway's 1917, § 1794; 1930, § 1738; 1942, § 640; Laws, 1960, ch. 222.

JUDICIAL DECISIONS

1. In general.

Trial court properly found that a law firm was not an interested party entitled to notice of an estate's final accounting pursuant to the notice statute because the firm did not probate a claim or have a contract with the estate or otherwise show a direct pecuniary interest in the estate. Ferrell v. Cole (In re Estate of Cole), 256 So. 3d 1156, 2018 Miss. LEXIS 366 (Miss. 2018).

Similar standard used in will contests should be used to define interested parties regarding the final accounting; to be an interested party under the statute, the party must have some legal tie to the estate in the fashion of a direct pecuniary interest. Ferrell v. Cole (In re Estate of Cole), 256 So. 3d 1156, 2018 Miss. LEXIS 366 (Miss. 2018).

After the final account has been filed, it is the administratrix duty to cause summons to be issued for all parties interested as far as known to her at the hearing on the final account. Smith v. Estate of King, 501 So. 2d 1120, 1987 Miss. LEXIS 2287 (Miss. 1987).

A minor seeking to be declared an heir of the decedent as an illegitimate daughter and to share in the estate should have been allowed to amend her complaint to allege that the widow and former executrix knew of the existence of the minor as an illegitimate child of the decedent, but fraudulently failed to so inform the court, notwithstanding that the minor's petition was filed more than 90 days after the publication of notice to the creditors of the estate. Smith v. Estate of King, 501 So. 2d 1120, 1987 Miss. LEXIS 2287 (Miss. 1987).

It is competent for the parties in interest to waive process and consent to the hearing of a final account. Pollock v. Buie, 43 Miss. 140, 1870 Miss. LEXIS 16 (Miss. 1870).

RESEARCH REFERENCES

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators §§ 868, 869.

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 1133 et seq. (notice).

CJS.

34 C.J.S., Executors and Administrators § 957.

§ 91-7-297. Hearing and adjudication of final account.

If process be returned executed, or publication has been made, the court shall examine the final account so presented and filed, hear the evidence in support of it, and the objections and evidence against it. If the court shall be satisfied that the account is correct, it shall make a final decree of approval and allowance, and shall, at the same time, order the executor or administrator to make distribution of the property in his hands. In proceedings for a final settlement, the court may allow any party interested to surcharge and falsify any annual or partial settlement of the executor or administrator.

HISTORY: Codes, 1857, ch. 60, art. 107; 1871, § 1169; 1880, § 2070; 1892, § 1953; 1906, § 2127; Hemingway's 1917, § 1795; 1930, § 1739; 1942, § 641; Laws, 1960, ch. 217, § 8; Laws, 2019, ch. 458, § 10, eff from and after July 1, 2019.

Cross References — Tax upon settlement of fiduciary's account, see § 27-7-69.
Payment of income tax as prerequisite to approval of final account, see § 27-7-69.
Executor's or administrator's liability for inheritance taxes, see § 27-9-37.
Payment of estate taxes as prerequisite to approval of final account, see § 27-9-41.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Discharge of representative.

1. In general.

Executor should be surcharged in his final account with sum which he paid out of funds of estate in settlement of just claims against estate, which were required by law to be duly probated but which were not probated within six-month period after publication of first notice by executor to creditors of estate, as such expenditures are without authority of law unless claims had been probated. Oberst v. Mullens, 43 So. 2d 560 (Miss. 1949).

Liability of surety may not be fixed in proceeding for final accounting by executor. Walton v. Walton's Estate, 143 Miss. 666, 109 So. 707, 1926 Miss. LEXIS 306 (Miss. 1926).

Surviving partner administering partnership estate properly allowed credit in his final account for payment of partnership debt out of his individual funds. Byrd v. King, 120 Miss. 435, 82 So. 312, 1919 Miss. LEXIS 104 (Miss. 1919).

Decree directing distribution to heirs does not affect right to payment of probated claims; fact claimant was administrator who had filed his final account immaterial. Oliver v. Smith, 94 Miss. 879, 49 So. 1, 1909 Miss. LEXIS 364 (Miss. 1909).

Until an executor has finally accounted the statute of limitations does not run in his favor against a legatee even where under the will he was to own the entire estate as long as he remained single, and the legatee's right to the legacy accrued only upon his subsequent marriage. Edwards v. Kelly, 83 Miss. 144, 35 So. 418, 1903 Miss. LEXIS 22 (Miss. 1903).

An administrator is not chargeable with property of which he had no knowledge, and is bound only to exercise the care of a prudent man in the management of his own business. O'Brian Bros. v. Wilson, 82 Miss. 93, 33 So. 946 (Miss. 1903).

2. Discharge of representative.

Where a decree made the discharge of the administrator of a decedent's estate conditioned on the administrator's filing of vouchers showing the distribution of all funds, payments of all debts, and all other expenses, and the administrator had not filed such vouchers and there was no showing that there had been a waiver of the filing of the vouchers with the consent and approval of the chancellor who issued the decree, the administrator had authority to act in an administrative capacity for all the heirs of the decedent and to institute a suit on a note against the defendant after the entry of the decree. Twilley v. McLain, 233 So. 2d 794, 1970 Miss. LEXIS 1675 (Miss. 1970).

RESEARCH REFERENCES

ALR.

Conclusiveness of allowance of account of trustee or personal representative as respects self-dealing in assets of estate. 1 A.L.R.2d 1060.

Application of dead man's statute in proceeding involving account of personal representative. 2 A.L.R.2d 349.

Right of executor or administrator to appeal from order granting or denying distribution. 16 A.L.R.3d 1274.

Right to partial distribution of estate or distribution of particular assets, prior to final closing. 18 A.L.R.3d 1173.

Right to probate subsequently discovered will as affected by completed prior proceedings in intestate administration. 2 A.L.R.4th 1315.

CJS.

34 C.J.S., Executors and Administrators § 1017 et seq.

§ 91-7-299. Allowance to executor or administrator.

On the final settlement the court shall make allowance to the executor or administrator for the property or the estate which has been lost, or has perished or decreased in value, without his fault; and profit shall not be allowed him in consequence of increase. The court shall allow to an executor or administrator, as compensation for his trouble, either in partial or final settlements, such sum as the court deems proper considering the value and worth of the estate and considering the extent or degree of difficulty of the duties discharged by the executor or administrator; in addition to which the court may allow him his necessary expenses, including a reasonable attorney's fee, to be assessed out of the estate, in an amount to be determined by the court.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 4 (3); 1857, ch. 60, art. 109; 1871, § 1171; 1880, § 2072; 1892, § 1956; 1906, § 2130; Hemingway's 1917, § 1798; 1930, § 1740; 1942, § 642; Laws, 1989, ch. 443, § 1, eff from and after July 1, 1989.

Cross References — Compensation of temporary administrator, see § 91-7-59.

Petition by executor or administrator for allowance of commissions, or for compensation for extra services and expenses, see Miss. Uniform Chancery Court Rule 6.12.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Court's discretion.
3. Compensation fixed by will.
4. Continuing a business.
5. Executor, administrator, or guardian acting as attorney.
6. Allowance for necessary expenses.
7. Propriety of particular awards.
8. Miscellaneous.

1. In general.

Under this section [Code 1942, § 642] the executors are entitled to an allowance of compensation, which should be fixed within the limits of the statute on the gross personal estate actually accounted for by the executors in good faith. Schwander v. Rubel, 221 Miss. 875, 75 So. 2d 45, 1954 Miss. LEXIS 603 (Miss. 1954).

Acceptance by an executor or trustee of an appointment under a will, whether under a stated compensation or where none is provided, except where a statute fixes it, is conclusive of any right to an increased compensation. Barry v. Barry, 198 Miss. 677, 21 So. 2d 922, 1945 Miss. LEXIS 239 (Miss. 1945).

An executor or trustee cannot accept his appointment and reject the condition as to compensation upon which it is made. Barry v. Barry, 198 Miss. 677, 21 So. 2d 922, 1945 Miss. LEXIS 239 (Miss. 1945).

In fixing amount of compensation under this section [Code 1942, § 642], there are numerous elements to be considered, such as: the mechanical work of making out the reports and of collecting the money and of disbursing it; the skill, responsibility, and amount involved; skillful, prompt and efficient service in the speedy disposition of winding up and settling the estate, responsibility and skill being important elements. Ralston v. Bank of Clarksdale, 188 Miss. 345, 194 So. 923, 1940 Miss. LEXIS 35 (Miss. 1940).

Surviving partner not entitled to compensation for administering partnership estate, unless authorized by statute, partnership agreement, or some other valid understanding. Byrd v. King, 120 Miss. 435, 82 So. 312, 1919 Miss. LEXIS 104 (Miss. 1919).

2. Court's discretion.

The supreme court will not interfere with the chancery court's exercise of discretion in regard to the allowance of compensation for administrator's fees within the limits prescribed by this section [Code 1942, § 642], except in cases of its manifest and flagrant abuse. Bryan v. Quinn, 233 Miss. 366, 102 So. 2d 124, 1958 Miss. LEXIS 392 (Miss. 1958).

The matter of the allowance of fees to executors and administrators for services rendered in the administration of an estate rests in the sound discretion of the chancery court, there being a minimum allowance of not less than one per cent and the maximum amount of seven per cent. Ralston v. Bank of Clarksdale, 188 Miss. 345, 194 So. 923, 1940 Miss. LEXIS 35 (Miss. 1940).

Unless the record discloses an abuse of discretion vested in the chancery court, the supreme court will not disturb the chancellor's action in fixing administrator's fees within the limits provided by this section [Code 1942, § 642]. Ralston v. Bank of Clarksdale, 188 Miss. 345, 194 So. 923, 1940 Miss. LEXIS 35 (Miss. 1940).

3. Compensation fixed by will.

Executor accepting appointment under will which fixes executor's compensation is entitled to no other compensation. Vicksburg Public Library v. First Nat'l Bank & Trust Co., 168 Miss. 88, 150 So. 755, 1933 Miss. LEXIS 183 (Miss. 1933).

Where will fixes executor's compensation, this section [Code 1942, § 642] does not apply. Vicksburg Public Library v. First Nat'l Bank & Trust Co., 168 Miss. 88, 150 So. 755, 1933 Miss. LEXIS 183 (Miss. 1933).

Where will appointed same corporation as executor and trustee, directed that "executor" be paid certain percentage of proceeds from sale of realty, and, for its services as "trustee," certain percentage of trust fund, and used words "executor" and "trustee" interchangeably, corporation held not entitled to executor's statutory compensation as to personal estate administered. Vicksburg Public Library v. First Nat'l Bank & Trust Co., 168 Miss. 88, 150 So. 755, 1933 Miss. LEXIS 183 (Miss. 1933).

4. Continuing a business.

Without authority from the chancery court to continue the business of a testator, the estate is not liable to an executor for his services upon any basis of quantum meruit. Barry v. Barry, 198 Miss. 677, 21 So. 2d 922, 1945 Miss. LEXIS 239 (Miss. 1945).

In administering estates of decedents, operation of a mercantile business should not be made alluring to administrators by allowance of salaries or exorbitant commissions, estates being administered for benefit of parties in interest, creditors, and distributees. Crescent Furniture & Mattress Co. v. Morgan, 178 Miss. 824, 173 So. 290, 1937 Miss. LEXIS 211 (Miss. 1937).

Administrator was not entitled to salary for conducting intestate's business in view of statute fixing compensation at not less than one or more than seven per cent of estate and necessary expenses. Crescent Furniture & Mattress Co. v. Morgan, 178 Miss. 824, 173 So. 290, 1937 Miss. LEXIS 211 (Miss. 1937).

5. Executor, administrator, or guardian acting as attorney.

Where an executor, administrator, or guardian also acts as attorney for the estate, there is no potential for double compensation, at least in the circumstance where the fiduciary fully itemizes his services in order to show the extent and degree of difficulty of his work and any separate legal work is separately itemized. Thomas v. Evans (In re Estate of Thomas), 740 So. 2d 332, 1999 Miss. App. LEXIS 117 (Miss. Ct. App. 1999).

There is no prohibition in the statute that would prevent a fiduciary who is also an attorney from petitioning for some part of his itemized services to be paid under this section, where his right to compensation would not necessarily be commensurate with prevailing legal fees; nor is there a prohibition for that same fiduciary, as to those separately identified services that were unquestionably performed in his capacity as an attorney, seeking compensation under § 91-7-281, in lieu of being paid for those particular services under this section. Thomas v. Evans (In re Estate of Thomas), 740 So. 2d 332, 1999 Miss. App. LEXIS 117 (Miss. Ct. App. 1999).

6. Allowance for necessary expenses.

Where heirs to an estate were unable to agree among themselves as to being appraisers and later agreed on disinterested parties to appraise the estate, the chancellor correctly allowed the administrator reimbursement of allowance of appraiser's fees in amount of $5 each, to two appraisers. Hughes v. Box, 224 Miss. 513, 81 So. 2d 242, 1955 Miss. LEXIS 516 (Miss. 1955).

Where at a sale of personal property an administrator employed an auctioneer and a bookkeeper and allowed them a total of $75 on the ground that their services were necessary and were to the best interests of the estate, the expense was properly allowed. Hughes v. Box, 224 Miss. 513, 81 So. 2d 242, 1955 Miss. LEXIS 516 (Miss. 1955).

Where in the course of administration of an estate the heirs petitioned for sale of cotton gin property owned by decedent, and the court appointed an administrator as a special commissioner to make the sale and the administrator obtained allowances for services of a surveyor, auctioneer and bookkeeper, the total amount of these expenses being $114, and the cotton gin property brought $53,000 at a sale which far exceeded its appraised value, these items of expense were properly allowed to the administrator. Hughes v. Box, 224 Miss. 513, 81 So. 2d 242, 1955 Miss. LEXIS 516 (Miss. 1955).

The allowance by the chancellor of payment by the administrator of a liberal commission to a broker for private sale of cattle was sustained hesitantly where the administrator was paid the maximum of seven per cent of the funds coming into his hands. Dabbs v. Fisher, 27 So. 2d 342 (Miss. 1946).

7. Propriety of particular awards.

Attorney fees granted to an executor's attorney were not excessive because the fees were reasonable and not out of line with the fees claimed by the trustee who challenged them. Carson Family Trust v. Carson (In re Estate of Carson), 986 So. 2d 1072, 2008 Miss. App. LEXIS 434 (Miss. Ct. App. 2008).

The chancery court properly denied executrix fees where the chancellor found that the estate was administered in a grossly negligent manner; in support of this finding of negligent administration, or maladministration, the chancellor cited the executrix's noncompliance with court orders that eventually culminated in her being found guilty of civil and criminal contempt. In re Estate of Collins v. Collins, 742 So. 2d 147, 1999 Miss. App. LEXIS 251 (Miss. Ct. App. 1999).

An administrator's fee, an attorney's fee, and accounting fees were excessive where (1) the $3.1 million estate was very simple, (2) the executor, attorney, and accountant had ready access to information which made their jobs considerably easier, and (3) the fees equated to approximately $1200 per hour for the administrator and attorney and $300 per hour for the accountant. Rich v. Moore (In re Estate of Johnson), 735 So. 2d 231, 1999 Miss. LEXIS 114 (Miss. 1999).

Absent maladministration, compensation for an executor of an estate with a gross value in excess of $229,000 should be awarded within the statutory guidelines, rather than at $1500 or 6/10 of one percent of the value of the estate. Scott v.

Hollingsworth, 487 So. 2d 811, 1986 Miss. LEXIS 2438 (Miss. 1986).

Where the decedent left an estate of the approximate value of $139,000, the allowance to the executrix of a fee of $5,000 was not a manifest and flagrant abuse of discretion by the chancellor. Bryan v. Quinn, 233 Miss. 366, 102 So. 2d 124, 1958 Miss. LEXIS 392 (Miss. 1958).

Allowance of $3,000 to executor as compensation for his services is not excessive when total assets of estate amounted to $48,126.43, total disbursements amounted to $42,109.05 and he was successful in making sale of 500 acres of land for sum of $36,000, which was $8,000 in excess of all prior offers. Oberst v. Mullens, 43 So. 2d 560 (Miss. 1949).

Allowance to administrator of $2,000 as his compensation for services rendered in an estate consisting of something over $65,000 did not indicate an abuse of discretion of the chancery court. Ralston v. Bank of Clarksdale, 188 Miss. 345, 194 So. 923, 1940 Miss. LEXIS 35 (Miss. 1940).

8. Miscellaneous.

Appellant's delay in closing the estate and his other indiscretions as executor, most notably his decision to borrow thousands of dollars from the estate without court approval, provided ample reason for the chancery court to refuse to reimburse appellant for his work as executor. Dodson v. Dodson (In re Estate of Dodson), 20 So. 3d 73, 2009 Miss. App. LEXIS 716 (Miss. Ct. App. 2009).

Compensation allowed executor should not be reduced on ground that he did not comply with law as to payment of unprobated claims, when amounts expended by him without authority of law were restored by him to estate although claims were actually owed by testatrix and estate would have been liable had they been duly probated in time required by law. Oberst v. Mullens, 43 So. 2d 560 (Miss. 1949).

An executor who renders services to an estate beyond what his duties require and for which he had the right to employ another cannot receive additional compensation therefor, unless by agreement with the court or beneficiaries before he performed the service. Barry v. Barry, 198 Miss. 677, 21 So. 2d 922, 1945 Miss. LEXIS 239 (Miss. 1945).

Administrator was not entitled to commissions based upon that part of estate for which he did not account. Crescent Furniture & Mattress Co. v. Morgan, 178 Miss. 824, 173 So. 290, 1937 Miss. LEXIS 211 (Miss. 1937).

Where it appeared that an executor intended to return his commission to the estate it was improper to treat his intention as a donation to a part of the distributees, as each was entitled to a share therein. Owens v. Owens' Estate, 84 Miss. 673, 37 So. 149, 1904 Miss. LEXIS 95 (Miss. 1904).

RESEARCH REFERENCES

ALR.

Costs and other expenses incurred by fiduciary whose appointment was improper as chargeable against estate. 4 A.L.R.2d 160.

Right of executor or administrator to extra compensation for his legal services rendered by him. 65 A.L.R.2d 809.

Right of executor or administrator to extra compensation for his accounting services rendered by him. 65 A.L.R.2d 838.

Right to double compensation where same person (natural or corporate) acts as executor and trustee. 85 A.L.R.2d 537.

Resignation or removal of executor, administrator, guardian, or trustee, before final administration or before termination of trust, as affecting his compensation. 96 A.L.R.3d 1102.

Attorneys' fees: cost of services provided by paralegals or the like as compensable element of award in state court. 73 A.L.R.4th 938.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 836 et seq.

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 1471 et seq. (compensation and allowances; extra compensation).

8 Am. Jur. Legal Forms 2d, Executors and Administrators § 104:226 et seq. (compensation for executors and administrators).

CJS.
34 C.J.S., Executors and Administrators § 970 et seq.

§ 91-7-301. Personal estate sold for division.

When personal property of a deceased person cannot be equally divided in kind, the court may, on petition, decree a sale of such property and order a distribution of the proceeds; and such sale may be for cash or on credit, as the court may direct. All parties interested as distributees or legatees shall be cited by summons or by publication, but if the value of the property do not exceed Five Hundred Dollars ($500.00), notice to the distributees or legatees shall not be necessary.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (82); 1857, ch. 60, art. 116; 1871, § 1173; 1880, § 2077; 1892, § 1903; 1906, § 2078; Hemingway's 1917, § 1745; 1930, § 1741; 1942, § 643.

Cross References — Bringing advancements into hotchpot, see § 91-1-17.

JUDICIAL DECISIONS

1. In general.

As long as the parties in interest are before the court, either as plaintiffs or defendants, it does not matter whether the petition be filed by the administrator or the distributees. Nabors v. McKay, 27 Miss. 799, 1854 Miss. LEXIS 134 (Miss. 1854).

§ 91-7-303. Distribution compelled.

Any person entitled to a distributive share of an intestate's estate, or to a legacy under a last will and testament, may, at any time after the expiration of six months from the grant of letters testamentary or of administration, petition the court therefor, setting forth his claim; and the administrator or executor and all persons interested as distributees or legatees shall be cited to appear. Upon return of summons executed or publication made, the court may order the administrator or executor to make the distribution or to pay the legacies according to the rights of the parties, as may be adjudged; but the administrator or executor shall not be compelled, before final settlement, to make distribution or to pay any legacy until bond, with sufficient sureties, be given by the distributee or legatee, conditioned to refund his proportionate part of any debts or demands that may afterwards appear against the estate, and the costs of recovering the same.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (91); 1857, ch. 60, art. 118; 1871, § 1175; 1880, § 2076; 1892, § 1961; 1906, § 2137; Hemingway's 1917, § 1805; 1930, § 1742; 1942, § 644; Laws, 1924, ch. 152.

Cross References — Partition of land by agreement or by arbitration, see § 11-21-1.
Ordering sale of land rather than partition, see § 11-21-11.
Bringing advancements into hotchpot, see § 91-1-17.

Distribution of insolvent estate, see §§ 91-7-261, 91-7-271.
Appointment of custodian for unclaimed distributive share, see § 91-7-321.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Refunding bonds.

1. In general.

Residuary legatee cannot recover from estate of decedent's sister such sums as were expended by sister in her own behalf after acquiring possession of decedent's estate on setting aside of will as court would have compelled trustees under will, if it had not been set aside, to expend for her benefit. Rice v. McMullen, 207 Miss. 706, 43 So. 2d 195, 1949 Miss. LEXIS 382 (Miss. 1949).

Residuary legatee who was to receive on death of decedent's sister a one-fifth part of property remaining in hands of trustees under will is not guilty of laches by failure to demand anything of trustees until death of decedent's sister as he had no right to anything until her death. Rice v. McMullen, 207 Miss. 706, 43 So. 2d 195, 1949 Miss. LEXIS 382 (Miss. 1949).

Beneficiary of testamentary trust has right to follow trust property which has been wrongfully transferred to third party with notice of trust and to recover res if he can identify it in hands of third party, or he can have judgment against third party for value of trust property if such identification or tracing is impossible. Rice v. McMullen, 207 Miss. 706, 43 So. 2d 195, 1949 Miss. LEXIS 382 (Miss. 1949).

Distributee may sue in chancery but not at law to recover personal property of decedent where there are no outstanding debts against estate and no administration, or final settlement of administration. Jones v. R. L. Clemmer & Son, 98 Miss. 508, 54 So. 4, 1910 Miss. LEXIS 90 (Miss. 1910).

No proceeding for distribution of any of the estate before expiration of statutory time period from grant of letters is permissible. Jones v. Jones, 94 Miss. 460, 49 So. 115, 1909 Miss. LEXIS 367 (Miss. 1909).

Proceeds of sale of timber being only assets of estate of deceased wife, assignee of husband, entitled to share thereof, could maintain bill for distribution of the funds in hands of administrator. McIntosh Bros. v. Rutland, 88 Miss. 718, 41 So. 372, 1906 Miss. LEXIS 182 (Miss. 1906).

2. Refunding bonds.

After the expiration of the statutory time period, if there be assets, the distributees are prima facie entitled to distribution upon the execution of the refunding bonds. Packwood v. Elliott, 43 Miss. 504, 1870 Miss. LEXIS 59 (Miss. 1870).

The distributees may compel distribution of any balance not required for the immediate exigencies of the estate, upon the execution of refunding bonds. Allison v. Abrams, 40 Miss. 747, 1866 Miss. LEXIS 110 (Miss. 1866).

RESEARCH REFERENCES

ALR.

Ademption of bequest of proceeds of property. 45 A.L.R.3d 10.

Proper disposition under will providing for allocation of express percentages or proportions amounting to more or less than whole of residuary estate. 35 A.L.R.4th 788.

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators § 974 et seq.

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 1181 et seq. (orders for distribution).

CJS.

34 C.J.S., Executors and Administrators § 675 et seq.

§ 91-7-305. Distribution of assets in kind to surviving spouse.

(1) Whenever under any last will and testament or trust indenture the executor, trustee, or other fiduciary is required to, or has an option to, satisfy a bequest, devise, or transfer in trust to or for the benefit of the surviving spouse of a decedent by a transfer of assets of the estate or trust in kind at the values as finally determined for federal estate tax purposes, the executor, trustee, or other fiduciary shall, in the absence of contrary provisions in such will or trust indenture, satisfy such bequest, devise, or transfer by the distribution of assets, including cash, fairly representative of the appreciation or depreciation in the value of all property available for distribution in satisfaction of such bequest, devise, or transfer.

(2) This section shall apply to wills of decedents dying before or after May 20, 1966, and to trust agreements executed before or after such date; provided, however, that this section shall not be applied so as to require repayment to the fiduciary of any distributions actually made prior to such date, nor to impose any obligation or liability upon the fiduciary by reason of distributions actually made prior to such date.

(3) The enactment of this statute is not intended to imply that the present law of this state, relating to selection of property by fiduciaries in the circumstances herein described, has been otherwise than as set forth in subsection (1) hereof.

HISTORY: Codes, 1942, § 644.7; Laws, 1966, ch. 393, §§ 1-4, eff from and after passage (approved May 20, 1966).

Cross References — Payment of indebtedness or delivery of personal property of decedent to decedent's successor, see § 91-7-322.

RESEARCH REFERENCES

ALR.

Statutory or constitutional provision allowing widow but not widower to take against will and receive dower interests, allowances, homestead rights, or the like as denial of equal protection of law. 18 A.L.R.4th 910.

§ 91-7-307. Delaying settlement.

If an executor or administrator improperly delay making a final settlement, he shall be summoned to show cause why a final settlement should not be made. On the return of summons executed, if a final settlement be not made or cause shown why it cannot then be made, the court may fine such delinquent in any sum not exceeding Five Hundred Dollars ($500.00) and imprison him not exceeding three months, for a contempt. Any executor or administrator whose letters have been revoked may be dealt with in like manner for failure to make settlement.

HISTORY: Codes, 1857, ch. 60, art. 108; 1871, § 1170; 1880, § 2071; 1892, § 1955; 1906, § 2129; Hemingway's 1917, § 1797; 1930, § 1743; 1942, § 645.

RESEARCH REFERENCES

ALR.

Personal liability of executor or administrator for interest on legacies or distributive shares where payment is delayed. 18 A.L.R.2d 1384.

§ 91-7-309. Accounts may be opened and falsified in two years.

Any person interested may, at any time within two years after final settlement, by bill or petition, open the account of any executor, administrator, or guardian and surcharge and falsify the same, and not after, saving to minors and persons of unsound mind the same time after the removal of their disabilities. Such bills or petitions may be filed without leave of the court or chancellor, and evidence shall be admissible in such cases to show the falsity of the account. Such bills and petitions shall not be governed by the rules applicable to bills of review in chancery, but in such cases it will be the duty of the court to correct any errors of law or fact occurring in the final settlement of the executor, administrator, or guardian.

HISTORY: Codes, 1880, § 2075; 1892, § 1960; 1906, § 2136; Hemingway's 1917, § 1804; 1930, § 1744; 1942, § 646; Laws, 1894, ch. 53.

Cross References — Contents of final accounts, see § 91-7-291.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Applicability.

1. In general.

Chancellor did not err in dismissing a nephew's case against his uncles on the ground that his claim was time-barred pursuant to Miss. Code Ann. § 91-7-309 because if either the two-year statute of limitations under § 91-7-309 or the three-year statute of limitations for an action to set aside a deed based on fraud was applied, the nephew's claim was still time-barred; the statute of limitations began running against the nephew on November 26, 1999, his twenty-first birthday, but the nephew did not file his lawsuit until May 21, 2009, which was well outside of the statute of limitations. Walton v. Walton, 52 So. 3d 468, 2011 Miss. App. LEXIS 32 (Miss. Ct. App. 2011).

Decedent's grandson, who was not an heir at law, failed to set out in his complaint basic available information, such as the time of the alleged fraud on the part of the decedent's administrator; the allegation of fraud was not stated with the required particularity to overcome the two-year statute of limitations. McClendon v. Hudson (In re Estate of Hudson), 962 So. 2d 90, 2007 Miss. App. LEXIS 489 (Miss. Ct. App. 2007).

In a proceeding by a widow to reopen the estate of her deceased husband more than two years after entry of a final decree on the ground that the final account had never been filed and that the final decree was therefore a nullity, the trial court properly denied the petition where the transcript was a part of the record and it indicated that, although the final account had not be stamped "Filed" until three years later, there was no dispute that it had been presented to the court, that it had been a part of the record on presentation of same, and that the decree had been based upon said account and evidence heard for the approval thereof, and where there was no specific charge of fraud against the executor which would constitute a bar to the statute of limitations. Byrd v. Page, 384 So. 2d 1038, 1980 Miss. LEXIS 2015 (Miss. 1980).

The action of an administratrix of a decedent, attacking final decrees entered in her decedent's guardianship and in settlement of the decedent's deceased father's estate, claiming an interest in the after-acquired property of coheirs, was barred by the section [Code 1942, § 646] where no petition was filed to falsify the settlement of the two administrations within two years after the date of the decrees. Barrett v. Turner, 229 So. 2d 563, 1969 Miss. LEXIS 1249 (Miss. 1969).

This provision does not apply to one entitled to participate in the distribution who was not made a party to the administration proceeding, where there was no statutory proceeding to determine heirs. Shepherd v. Townsend, 249 Miss. 383, 163 So. 2d 746, 1964 Miss. LEXIS 401 (Miss. 1964).

Petition by war veteran's widow against administratrix and her bondsmen to review previous proceedings whereby administratrix distributed to various persons sums due to veteran under federal acts held not demurrable because distributees were not joined as parties, where money involved, under federal and state statutes, belonged to widow as sole distributee, and persons to whom administratrix distributed money were strangers to estate so far as widow's rights were concerned. Lewis v. Jefferson, 173 Miss. 657, 161 So. 669, 1935 Miss. LEXIS 217 (Miss. 1935).

Since heirs under statute could challenge administrator's final steps until two years after final account was approved, judgment approving administrator's sale was interlocutory, and hence court at subsequent term could require administrator to charge himself with true value of merchandise sold and subsequently repurchased by administrator after fraudulently inducing widow not to bid. Rea v. Smith, 172 Miss. 238, 159 So. 845, 1935 Miss. LEXIS 132 (Miss. 1935).

Person interested in estate after dismissal of exception to account was without right to reopen, falsify, and surcharge account on same issue. Bright v. Bright, 156 Miss. 766, 126 So. 901, 1930 Miss. LEXIS 223 (Miss. 1930).

Where heir did not demand accounting, his heirs cannot do so after 30 years. Norris v. Burnett, 108 Miss. 407, 66 So. 332, 1914 Miss. LEXIS 174 (Miss. 1914).

2. Applicability.

Chancellor erred when he dismissed the contempt petition that the decedent's granddaughter filed in the decedent's conservatorship matter as her claims were not governed by the two-year statute of limitations as her claims were not premised on reopening or falsifying the conservator's final accounting; instead, the seven-year statute of limitations governed her contempt claim that the conservator disregarded the chancellor's order to transfer the balance of the decedent's account to the decedent's estate; and the granddaughter's remaining claims, including breach of the conservator's fiduciary duty and other claims related to opening the joint account, fell under the three-year "catch-all" statute of limitations. Fitzmaurice v. Vandevort (In re Margarette Smith), 237 So. 3d 852, 2017 Miss. App. LEXIS 447 (Miss. Ct. App. 2017), cert. denied, 2018 Miss. LEXIS 118 (Miss. Mar. 8, 2018), cert. denied, 237 So. 3d 1268, 2018 Miss. LEXIS 120 (Miss. 2018).

§ 91-7-311. Bonds to be recorded; suits thereon.

All bonds required and given in the administration of estate, testate and intestate, and the bond or bonds of the county administrator shall be recorded in the office of the clerk of the chancery court of the county, in a book kept for that purpose, and may be put in suit by any person injured by a breach thereof, he being responsible for costs. Any such bond shall not be void upon the first recovery, but may be sued on from time to time until the whole penalty shall have been recovered. When the whole penalty shall be recovered, the chancery court shall apportion the recovery, according to the rights of parties.

HISTORY: Codes, 1892, § 1854; 1906, § 2028; Hemingway's 1917, § 1693; 1930, § 1745; 1942, § 647.

Cross References — Chancery court's concurrent jurisdiction over suits on bonds of fiduciaries, see Miss. Const. Art. 6, § 161.

Bond of executor or administrator with will annexed, see § 91-7-41.

When bond is not required, see § 91-7-45.

Administrator's bond, see § 91-7-67.

Bond of administrator de bonis non, see § 91-7-69.

Right of administrator de bonis non to maintain action on bond of former executor or administrator, see § 91-7-71.

County administrator's bond, see § 91-7-75.

Suit on bond for failure to account, see § 91-7-277.

JUDICIAL DECISIONS

1. In general.

On appeal from decree on exceptions to final account of administrator, supreme court would render decree against surety on administrator's bond, where surety waived process on petition filed showing breach of bond, appeared in court and controlled exceptions to final account, agreed to appointment of master, excepted to his report, appeared in supreme court and made no objection to form of petition. Crescent Furniture & Mattress Co. v. Morgan, 178 Miss. 824, 173 So. 290, 1937 Miss. LEXIS 211 (Miss. 1937).

Liability of surety on administrator's bond held not limited to those creditors who appealed from decree on exceptions to final account. Crescent Furniture & Mattress Co. v. Morgan, 178 Miss. 824, 173 So. 290, 1937 Miss. LEXIS 211 (Miss. 1937).

Suit maintainable in Mississippi on bond of executor, in name of Tennessee to compel executor appointed in Tennessee to pay over money converted in Mississippi, to be administered according to Tennessee law. Cutrer v. Tennessee, 98 Miss. 841, 54 So. 434, 1910 Miss. LEXIS 132 (Miss. 1910).

Courts of Mississippi have jurisdiction of suit on executrix's bond for concealing assets, though she resides in Alabama, where she resided in Mississippi at the decedent's death, administration undertaken here, situs of assets here, and surety resides here. Myers v. Martinez, 95 Miss. 104, 48 So. 291, 1909 Miss. LEXIS 206 (Miss. 1909).

RESEARCH REFERENCES

Am. Jur.

31 Am. Jur. 2d, Executors and Administrators §§ 1105, 1114.

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 1601 et seq. (actions on administration bonds).

§ 91-7-313. Suit for devastavit.

Parties interested in an estate as legatees, distributees, or creditors may, either jointly or severally, institute proceedings upon the bond of the executor or administrator or guardian for a devastavit against the principal and his surety without first having instituted suit against the executor or administrator or guardian to establish a devastavit. When any executor, administrator or guardian is a nonresident of, or shall absent himself from, or conceal himself within this state so that personal service of summons or citation or attachment cannot be made upon him, and such nonresident, absent or concealed executor, administrator, or guardian shall fail to file his accounts and make his settlements as required by law, or shall have unlawfully removed any of the property committed to his trust, or shall have been guilty of any misappropriation or devastavit, it shall be the duty of the court, on the motion of the clerk as elsewhere provided in this chapter, or on the motion of any party in interest, to proceed against the surety or sureties on the bond of said executor, administrator, or guardian, in respect to all of which matters the said surety or sureties shall be taken and held as principal. In proceeding as aforementioned, the default of the said executor, administrator, or guardian in failing to file and settle his accounts as required by law shall be taken as prima facie evidence that the said defaulter has misappropriated the money or property, or both, which may be disclosed by the inventory, appraisement, or by any other of the official papers in the case, or which may be shown by competent evidence outside of said record, to have come into the possession of said defaulter.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 12 (4); 1857, ch. 60, art. 123; 1871, § 1180; 1880, § 2084; 1892, § 1855; 1906, § 2030; Hemingway's 1917, § 1695; 1930, § 1746; 1942, § 648.

Cross References — Chancery court's concurrent jurisdiction over suits on bonds of fiduciaries, see Miss. Const. Art. 6, § 161.

Limitation of actions against executors or administrators, see § 15-1-25.

Penalty for removal of estate property from state, see § 91-7-257.

§ 91-7-315. New bond of executors and administrators may be required.

If the bond of an executor or an administrator, whether taken at the time of the grant of letters or afterwards, be insufficient, the court or chancellor or clerk may, on five days' notice to the executor or administrator, require him to give a new bond; and in default thereof the letters shall be revoked and administration de bonis non granted to some competent person. If such new bond be given, it shall be cumulative security and shall bind the obligors therein for past as well as future liabilities.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (64); 1857, ch. 60, art. 66; 1871, § 1121; 1880, § 2012; 1892, § 1862; 1906, § 2037; Hemingway's 1917, § 1702; 1930, § 1747; 1942, § 649.

Cross References — Bond of executor or administrator with will annexed, see § 91-7-41.

Administrator's bond, see § 91-7-67.

County administrator's bond, see § 91-7-75.

JUDICIAL DECISIONS

1. In general.

Certificate whereby defendant assumed liability for losses under administrator's bond arising out of acts committed after May 1, 1933, was not "new bond" so as to bind defendant under statute for past as well as future liability, but was merely written evidence of limited assumption of liability, and hence defendant was liable for amount wrongfully disbursed by administrator after May 1, 1933, but not for amounts wrongfully disbursed prior to that time. National Surety Corp. v. Laughlin, 178 Miss. 499, 172 So. 490, 1937 Miss. LEXIS 187 (Miss. 1937).

RESEARCH REFERENCES

ALR.

What funds, not part of the estate, are received under color of office so as to render liable surety on executor's or administrator's bond. 82 A.L.R.3d 869.

Am. Jur.

9A Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Forms 361 et seq. (additional bond).

CJS.

34 C.J.S., Executors and Administrators § 1080.

§ 91-7-317. Relief of sureties and new bond.

A surety on any bond of an executor, administrator, county administrator, or any other administrator apprehending danger of loss because of his suretyship may petition the court, chancellor, or clerk to require the executor or administrator to give a new bond and that he may be discharged from further liability. The court, chancellor, or clerk, on five days' notice to the executor or administrator, shall grant such petition and require a new bond, within a reasonable time, to be prescribed. In case of refusal or failure to give such new bond, the executor or administrator shall be removed and administration de bonis non granted. The acts done by the executor or administrator, and all proceedings that may have been instituted against him, shall be treated and conducted by or against his successor, as in case of the death of an executor or administrator. If the executor or administrator shall give new bond as required, the original bond shall from that time cease to be operative in future, but not as to previous liabilities; and the effect of such new bond shall be to bind the obligors therein for past as well as future liabilities.

HISTORY: Codes, Hutchinson's 1848, ch. 49, art. 1 (65); 1857, ch. 60, art. 66; 1871, § 1121; 1880, §§ 2002, 2012; 1892, § 1863; 1906, § 2038; Hemingway's 1917, § 1703; 1930, § 1748; 1942, § 650.

Cross References — Cancellation of bond of executor or administrator by chancery court, see § 9-5-103.

Sureties generally, see § 87-5-1 et seq.

JUDICIAL DECISIONS

1. In general.

A surety on an administrator's bond is entitled under this section [Code 1942, § 650] as a matter of right to be discharged of liability without arriving or proving any facts giving rise to an apprehension of loss. In re Estate of Rowell, 247 Miss. 571, 156 So. 2d 812, 1963 Miss. LEXIS 326 (Miss. 1963).

§ 91-7-319. Executors may receive credit for costs of bond in surety company.

Any receiver, assignee, guardian, executor, administrator, or other fiduciary required by law or the order of any court or judge to give bond or other obligation, as such, may include, as a part of the lawful expense of executing this trust, and may receive credit for the sum paid to a guaranty or surety company, authorized under the laws of this state so to do, for becoming his surety on such bond, not to exceed the sum paid for such bond as determined by the rate on file with and approved by the Commissioner of Insurance for such company.

HISTORY: Codes, 1906, §§ 2029, 2440; Hemingway's 1917, §§ 1694, 2001; 1930, § 760; 1942, § 1675; Laws, 1900, chs. 93, 96; Laws, 1956, ch. 235; Laws, 1987, ch. 422, § 56, eff from and after January 1, 1988.

JUDICIAL DECISIONS

1. In general.

Premium of bond of surviving partner proper charge against partnership property under this section [Code 1942, § 1675]. Rose v. Jones, 118 Miss. 494, 78 So. 771, 1918 Miss. LEXIS 41 (Miss. 1918).

§ 91-7-321. Custodian appointed for distributive share.

If any person entitled, under a decree of the chancery court, to a distributive share of an estate, or any other funds under the control of the court, shall not apply for it within six months after the decree of the court adjudicating his right thereto, a custodian of such share or interest may be appointed by the court, or the chancellor in vacation, without notice to any one. The court may make such order for the safekeeping or secure investment of the fund as may be proper.

HISTORY: Codes, 1880, § 2074; 1892, § 1959; 1906, § 2135; Hemingway's 1917, § 1803; 1930, § 1750; 1942, § 652.

OPINIONS OF THE ATTORNEY GENERAL

Under Miss. Code Section 91-7-321, court may "make such order for the safekeeping or secure investment of the fund as may be proper"; however, these funds are not public funds; rather they are private funds being held in trust for beneficiaries; as such, deposit into account of county treasury would not be appropriate.

Salter, Apr. 28, 1993, A.G. Op. #93-0227.

§ 91-7-322. Payment of indebtedness or delivery of personal property of decedent to decedent's successor; affidavit of successor.

(1) Except as may be otherwise provided by Sections 81-5-63, 81-12-135, 81-12-137 and 91-7-323, at any time after thirty (30) days from the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment when due of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent, as defined herein, or in a manner as directed by the successor, upon being presented an affidavit made by the successor stating:

(a) That the value of the entire probate estate of the decedent, wherever located, excluding all liens and encumbrances thereon, does not exceed Seventy-five Thousand Dollars ($75,000.00);

(b) That at least thirty (30) days have elapsed since the death of the decedent;

(c) That no application or petition for the appointment of a personal representative of the decedent is pending, nor has a personal representative of the decedent been appointed in any jurisdiction;

(d) The facts of relationship establishing the affiant as a successor of the decedent;

(e) Directing the manner of distribution of the debt or property; and

(f) Acknowledging the successor's obligation to distribute the debt or property to those having a superior right to same.

(2) For the purposes of this section, "successor" means:

(a) The decedent's spouse;

(b) If there is no surviving spouse of the decedent, then any child of the decedent;

(c) If there is no surviving spouse or children of the decedent, then to any grandchild of the decedent; or

(d) If there is no surviving spouse, children or grandchildren of the decedent, then either parent or any siblings of the decedent.

(3) Any minor or incapacitated adult who is a successor of the decedent may be represented by a guardian, natural or appointed, conservator, custodian, or other personal representative, as appointed by the court or by power of attorney.

(4) Except as otherwise provided in Sections 93-20-209 and 93-20-431, the representative of a minor or incapacitated adult as defined in subsection (3) of this section shall receive any property or payments from the decedent's estate for the sole use and benefit of said minor or incapacitated adult.

(5) The successor of a decedent, upon complying with the provisions of

subsection (1) of this section, shall be empowered to negotiate, transfer ownership and exercise all other incidents of ownership with respect to the personal property and instruments described in subsection (1) of this section.

(6) Any person paying, delivering, transferring or issuing personal property or the evidence thereof pursuant to the provisions of subsection (1) of this section shall be discharged and released to the same extent as if such person had dealt with a personal representative of the decedent. Such person shall not be required to see to the proper application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered, in accordance with the provisions of subsection (1) of this section, refuses to pay, deliver, transfer or issue any personal property or evidence thereof to the successor, such property or evidence thereof may be recovered or its payment, delivery, transfer or issuance compelled upon proof of the successor's right in a proceeding brought in chancery court for such purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made shall be answerable and accountable to the personal representative of the estate, if any, or to any other person having a superior right.

HISTORY: Laws, 1982, ch. 403, § 1; Laws, 1983, ch. 407; Laws, 1984, ch. 333; Laws, 1986, ch. 386; Laws, 2003, ch. 408, § 1; Laws, 2009, ch. 390, § 1, eff from and after July 1, 2009; Laws, 2019, ch. 458, § 18, eff from and after July 1, 2019; Laws, 2020, ch. 343, § 7, eff from and after July 1, 2020.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section by substituting "stirpes" for "stripes" in (2)(c). The Joint Committee ratified the correction at its October 19, 2020, meeting. The 2020 amendment by Section 7 of Chapter 343, Laws of 2020, substituted "any grandchild" and "grandchildren" for "descendants per stripes" in subsection (2)(c) and (d), respectively.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error near the beginning of the second sentence by deleting the word "that" following "However." The Joint Committee ratified the correction at its August 12, 2019, meeting.

Amendment Notes — The 2020 amendment in (1), inserted "or in a manner as directed by the successor" in the introductory paragraph, in (a), substituted "Seventy-five Thousand Dollars ($75,000.00)" for "Fifty Thousand Dollars ($50,000.00)," added (e) and (f), and made a related change; in (2), substituted "any grandchild" and "grandchildren" for "descendants per stripes," and deleted former (e), which read: "If none of the above successors can be found, then to the decedent's heirs at law"; and in (4), added the exception at the beginning, and inserted "of this section."

§ 91-7-323. Wages due deceased employee.

When any person, male or female, shall die leaving wages, salary or other compensation due him, it shall be lawful for the debtor to pay said wages, salary or other compensation to the wife or husband, as the case may be, of said deceased creditor if he or she leaves a wife or husband, as the case may be, surviving him or her; and if he or she shall leave no wife or husband surviving him or her, then to his or her children if adults; and if he or she shall leave no children and no wife or husband surviving him or her, then to his or her mother; and if he or she shall leave no wife or husband or children or mother surviving him or her, then to his or her father; and if he or she shall leave no wife or children or husband or mother or father surviving him or her, then to his or her brothers and sisters if adults. If such creditor shall have left no wife, husband, children, nor brothers nor sisters, nor father nor mother surviving him or her, or if any of his or her children surviving him or her shall be minors, or if any of his or her brothers or sisters surviving him or her, entitled to inherit, shall be minors, then it shall be lawful for said debtor to pay said wages, salary or other compensation to the chancery clerk of the county in which said creditor resided at the time of his or her death, or of the county where he or she died.

HISTORY: Codes, 1906, § 2133; Hemingway's 1917, § 1801; 1930, § 1751; 1942, § 653; Laws, 1920, ch. 304; Laws, 1981, ch. 394, § 1, eff from and after July 1, 1981.

Cross References — Payment of indebtedness or delivery of personal property of decedent to decedent's successor, see § 91-7-322.

OPINIONS OF THE ATTORNEY GENERAL

Consistent with and pursuant to IRS Revenue Ruling 86-109, neither federal nor state income taxes would be deducted from payments of accrued wages or vacation pay issued to a deceased state employee's designee or successor. Ranck, June 18, 1999, A.G. Op. #99-0230.

RESEARCH REFERENCES

Am. Jur.

9A Am. Jur. Pl & Pr Forms (Rev), Estates, Form 4.1 (Complaint, petition, or declaration – To collect compensation owed to deceased spouse).

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Form 1507.1 (Affidavit or declaration – To collect compensation owed deceased spouse).

§ 91-7-325. Suit to recover wages if not paid within sixty days.

After the sixty days referred to in Section 91-7-323 have passed, the parties hereinbefore designated as being the person to whom the wages so due the deceased creditor may be paid shall have the right, if they be adults, to maintain a suit to recover the amount due to the deceased creditor. When the party or parties entitled to receive said amount are minors, suit may be brought and maintained for them, by and in the name of the chancery clerk who is entitled to receive same.

HISTORY: Codes, Hemingway's 1921 Supp. § 1801a; Laws, 1930, § 1752; Laws, 1942, § 654; Laws, 1920, ch. 304.

RESEARCH REFERENCES

Am. Jur.

9A Am. Jur. Pl & Pr Forms (Rev), Estates, Form 4.1 (Complaint, petition, or declaration – To collect compensation owed to deceased spouse).

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Form 1507.1 (Affidavit or declaration – To collect compensation owed deceased spouse).

§ 91-7-327. Duty of chancery clerk when wages paid to him.

Where such wages are paid to the chancery clerk as provided in Sections 91-7-323 and 91-7-325, it shall be the duty of the chancery clerk to pay that portion of the wages of such employee which may belong to the adult children or brothers and sisters of such deceased employe, and to report to the next term of the chancery court who are the minor brothers or sisters or children of said employe and how much is coming to each one of the heirs of said employe. Thereupon the chancery court shall enter an order upon the minutes of the court, directing the payment by the chancery clerk of the shares of such minor children or brothers and sisters of such deceased employe. In any case where the employer shall pay such wages to the chancery clerk, he shall be discharged from all further liability. For receiving and disbursing the wages which may be paid to him, the clerk shall receive the commissions allowed to administrators and executors for collecting and distributing moneys belonging to the estate of a decedent.

HISTORY: Codes, 1906, § 2134; Hemingway's 1917, § 1802; 1930, § 1753; 1942, § 655.

RESEARCH REFERENCES

Am. Jur.

9A Am. Jur. Pl & Pr Forms (Rev), Estates, Form 4.1 (Complaint, petition, or declaration – To collect compensation owed to deceased spouse).

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Form 1507.1 (Affidavit or declaration – To collect compensation owed deceased spouse).

§ 91-7-329. Not to apply to estates administered upon.

Sections 91-7-323 through 91-7-327 shall not apply in cases where the estate of deceased creditor is administered upon.

HISTORY: Codes, Hemingway's 1921 Supp. § 1801b; 1930, § 1754; 1942, § 656; Laws, 1920, ch. 304.

RESEARCH REFERENCES

Am. Jur.

9A Am. Jur. Pl & Pr Forms (Rev), Estates, Form 4.1 (Complaint, petition, or declaration – To collect compensation owed to deceased spouse).

10 Am. Jur. Pl & Pr Forms (Rev), Executors and Administrators, Form 1507.1 (Affidavit or declaration – To collect compensation owed deceased spouse).

§ 91-7-331. "Administrator" defined.

The word administrator in this chapter shall embrace a temporary administrator whenever the contrary is not clearly inferable from the context.

HISTORY: Codes, 1880, § 2093; 1892, § 1962; 1906, § 2138; Hemingway's 1917, § 1806; 1930, § 1749; 1942, § 651.

JUDICIAL DECISIONS

1. In general.

Temporary administrator held entitled to compensation on same basis as regular administrator. King v. Wade, 175 Miss. 72, 166 So. 327, 1936 Miss. LEXIS 8 (Miss. 1936).

NONRESIDENT DECEDENTS

Sec.

91-7-501. Definitions.
91-7-503. Settlement of debt to estate of nonresident decedent outside of administration.
91-7-505. Release of debtor for good faith payment or delivery on basis of proof of authority and affidavit.
91-7-507. Settlement of debt to estate of nonresident decedent outside of administration prohibited upon resident creditor's notice.
91-7-509. Domiciliary foreign personal representative may file authenticated copies of appointment under certain circumstances.
91-7-511. Domiciliary foreign personal representative authorized to exercise powers of local personal representative as to Mississippi assets.
91-7-513. Effect of application or petition for local administration of estate.
91-7-515. Applicability of Sections 91-7-501 through 91-7-523 to nonresident decedents.
91-7-517. Personal jurisdiction of courts over foreign personal representative.
91-7-519. Foreign personal representative subject to jurisdiction of Mississippi courts to the same extent as decedent was immediately prior to death.
91-7-521. Service of process.
91-7-523. Effect of a foreign adjudication.

§ 91-7-501. Definitions.

As used in Sections 91-7-501 through 91-7-523:

(1) "Local administration" means administration by a personal representative appointed in this state pursuant to appointment proceedings.

(2) "Personal representative" means an executor, an administrator with or without the will annexed, or other representative authorized in a court of competent jurisdiction to conduct an estate administration.

(3) "Local personal representative" includes any personal representative appointed in this state by appointment proceedings and excludes foreign personal representatives who acquire the power of a local personal representative under Section 91-7-509.

(4) "Resident creditor" means a person domiciled in, or doing business in this state, who is, or could be, a claimant against an estate of a nonresident decedent.

(5) "Foreign personal representative" means a personal representative appointed by another jurisdiction.

HISTORY: Laws, 2020, ch. 406, § 47, eff from and after July 1, 2020.

§ 91-7-503. Settlement of debt to estate of nonresident decedent outside of administration.

At any time after the expiration of sixty (60) days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock or chose in action, to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of his appointment, including the admitted will and letters testamentary or letters of administration or substantial equivalent, authenticated under the Acts of Congress under 28 U.S.C. Section 1739, and an affidavit made by or on behalf of the personal representative stating:

(1) The date of the death of the nonresident decedent;

(2) That no local administration, or application or petition therefor, is pending in this state; and

(3) That the domiciliary foreign personal representative is entitled to payment or delivery.

HISTORY: Laws, 2020, ch. 406, § 48, eff from and after July 1, 2020.

§ 91-7-505. Release of debtor for good faith payment or delivery on basis of proof of authority and affidavit.

Payment or delivery made in good faith on the basis of the proof of authority, including the admitted will and letters testamentary or letters of administration or substantial equivalent, authenticated under the Acts of Congress under 28 U.S.C. Section 1739, and affidavit releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.

HISTORY: Laws, 2020, ch. 406, § 49, eff from and after July 1, 2020.

§ 91-7-507. Settlement of debt to estate of nonresident decedent outside of administration prohibited upon resident creditor's notice.

Payment or delivery under Section 91-7-503 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.

HISTORY: Laws, 2020, ch. 406, § 50, eff from and after July 1, 2020.

§ 91-7-509. Domiciliary foreign personal representative may file authenticated copies of appointment under certain circumstances.

If no local administration or application or petition therefor is pending in this state, a domiciliary foreign personal representative may file with a court in this state in a county in which property belonging to the decedent is located, authenticated copies of his appointment, including the admitted will and letters testamentary or letters of administration or substantial equivalent, authenticated under the Acts of Congress under 28 U.S.C. Section 1739, and any official bond he has given. A domiciliary foreign personal representative is subject to the estate administration requirements and obligations set forth in Title 91, Chapter 7, Mississippi Code of 1972.

HISTORY: Laws, 2020, ch. 406, § 51, eff from and after July 1, 2020.

§ 91-7-511. Domiciliary foreign personal representative authorized to exercise powers of local personal representative as to Mississippi assets.

A domiciliary foreign personal representative who has complied with Section 91-7-509 may exercise as to assets in this state all powers of a local personal representative, and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.

HISTORY: Laws, 2020, ch. 406, § 52, eff from and after July 1, 2020.

§ 91-7-513. Effect of application or petition for local administration of estate.

The power of a domiciliary foreign personal representative under Section 91-7-503 or Section 91-7-511 shall be exercised only if there is no administration or application therefor pending in this state. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under Section 91-7-509, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate. A person who, before receiving actual notice of a pending local administration, has changed his position in reliance upon the powers of a foreign personal representative shall not be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him in any action or proceedings in this state.

HISTORY: Laws, 2020, ch. 406, § 53, eff from and after July 1, 2020.

§ 91-7-515. Applicability of Sections 91-7-501 through 91-7-523 to nonresident decedents.

In respect to a nonresident decedent, the provisions of this chapter govern:

(1) Proceedings, if any, in a court of this state for probate of the will, appointment, removal, supervision, and discharge of the local personal representative, and any other order concerning the estate; and

(2) The status, powers, duties and liabilities of any local personal representative and the rights of claimants, purchasers, distributees and others in regard to a local administration.

HISTORY: Laws, 2020, ch. 406, § 54, eff from and after July 1, 2020.

§ 91-7-517. Personal jurisdiction of courts over foreign personal representative.

A foreign personal representative submits personally to the jurisdiction of the courts of this state in any proceeding relating to the estate by: (1) filing authenticated copies of his appointment as provided in Section 91-7-509; or (2) receiving payment of money or taking delivery of personal property under Section 91-7-503; or (3) doing any act as a personal representative in this state that would have given the state jurisdiction over him as an individual. Jurisdiction under paragraph (1) is limited to the money or value of personal property collected.

HISTORY: Laws, 2020, ch. 406, § 55, eff from and after July 1, 2020.

§ 91-7-519. Foreign personal representative subject to jurisdiction of Mississippi courts to the same extent as decedent was immediately prior to death.

In addition to jurisdiction conferred by Section 91-7-515, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his decedent was subject to jurisdiction immediately before death.

HISTORY: Laws, 2020, ch. 406, § 56, eff from and after July 1, 2020.

§ 91-7-521. Service of process.

(a) Service of process may be made upon the foreign personal representative by registered or certified mail, addressed to his last reasonably ascertainable address, requesting a return receipt signed by addressee only. Notice by ordinary first-class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or his decedent immediately before death.

(b) If service is made upon a foreign personal representative as provided in subsection (a), he shall be allowed at least thirty (30) days within which to appear or respond.

HISTORY: Laws, 2020, ch. 406, § 57, eff from and after July 1, 2020.

§ 91-7-523. Effect of a foreign adjudication.

An adjudication rendered in any jurisdiction in favor of or against any foreign personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication.

HISTORY: Laws, 2020, ch. 406, § 58, eff from and after July 1, 2020.

CHAPTER 8.

MISSISSIPPI UNIFORM TRUST CODE

Article 1. General Provisions and Definitions. 91-8-101
Article 2. Judicial Proceedings. 91-8-201
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Article 4. Creation, validity, modification, and termination of trust. .. 91-8-401
Article 5. Creditor's Claims; Spendthrift and Discretionary Trusts. .. 91-8-501
Article 6. Revocable Trusts. 91-8-601
Article 7. Office of Trustee. 91-8-701
Article 8. Duties and Powers of Trustee. 91-8-801
Article 9. Uniform Prudent Investor Act. 91-8-901
Article 10. Liability of Trustees and Rights of Persons Dealing with Trustee. 91-8-1001
Article 11. Miscellaneous Provisions. 91-8-1101
Article 12. Trust Advisors and Trust Protectors. 91-8-1201

ARTICLE 1.

GENERAL PROVISIONS AND DEFINITIONS.

Sec.
91-8-101. Short title.
91-8-102. Scope.
91-8-103. Definitions.
91-8-104. Knowledge.
91-8-105. Default and mandatory rules.
91-8-106. Common law of trusts; principles of equity.
91-8-107. Governing law.
91-8-108. Principal place of administration.
91-8-109. Methods and waiver of notice.
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91-8-111. Nonjudicial settlement agreements.
91-8-112. Rules of construction.

§ 91-8-101. Short title.

This chapter may be cited as the Mississippi Uniform Trust Code.

HISTORY: Laws, 2014, ch. 421, § 1, eff from and after July 1, 2014.

Editor's Notes — Laws of 2014, ch. 421, § 104 provides:

"SECTION 104. The codifier is directed to codify Sections 1 through 104 of this act as Title 91, Chapter 8, Mississippi Code of 1972." At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, Section 104 has not been codified as it is only directory language.

Comparable Laws from other States — Alabama: Code of Ala. § 19-3B-101 et seq.
Arkansas: A.C.A. § 28-73-101 et seq.
District of Columbia: D.C. Code § 19-1301.01 et seq.
Kansas: K.S.A. § 58a-101 et seq.
Kentucky: KRS § 386B.1-010 et seq.
Maine: 18-B M.R.S. § 101 et seq.
Massachusetts: ALM GL ch. 203E, § 101 et seq.

Missouri: §§ 456.1-101 through 456.11-1106 R.S. Mo.
Montana: § 72-38-101 et seq., MCA.
Nebraska: R.R.S. Neb. § 30-3801 et seq.
New Hampshire: RSA 564-B:1-101 et seq.
New Jersey: N.J. Stat. § 3B:31-1 et seq.
New Mexico: N.M. Stat. Ann. § 46A-1-101 et seq.
North Carolina: N.C. Gen. Stat. § 36C-1-101 et seq.
North Dakota: N.D. Cent. Code §§ 59-09-01 through 59-19-02.
Ohio: O.R.C. §§ 5801.01 through 5811.03.
Oregon: ORS § 130.001 et seq.
Pennsylvania: 20 Pa.C.S. §§ 7701 through 7790.3.
South Carolina: S.C. Code Ann. § 62-7-101 et seq.
Tennessee: Tenn. Code Ann. § 35-15-101 et seq.
Utah: Utah Code Ann. §§ 75-7-101 through 75-7-1201.
Vermont: 14A V.S.A. § 101 et seq.
Virginia: Va. Code Ann. § 64.2-700 et seq.
West Virginia: W. Va. Code § 44D-1-101 et seq.
Wyoming: Wyo. Stat. § 4-10-101 et seq.

§ 91-8-102. Scope.

This chapter applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.

HISTORY: Laws, 2014, ch. 421, § 2, eff from and after July 1, 2014.

§ 91-8-103. Definitions.

In this chapter:

(1) "Action," with respect to an act of a trustee, includes a failure to act.

(2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on July 1, 2014, or as later amended.

(3) "Beneficial interest" means a distribution interest or a remainder interest; provided, however, a beneficial interest specifically excludes a power of appointment or a power reserved by a settlor.

(4) "Beneficiary" means a person that:

(A) Has a present or future beneficial interest in a trust, vested or contingent; or

(B) In a capacity other than that of trustee, holds a power of appointment over trust property.

(5) "Beneficiary surrogate" means a person, including a trust protector or trust advisor, other than a trustee, designated by the settlor in the trust instrument or in a writing delivered to the trustee, or designated in a writing delivered to the trustee by a trust protector or trust advisor with power under the terms of the trust instrument to receive notices, information, and reports otherwise required to be provided to a beneficiary under Section 91-8-813(a) and (b), or to represent a beneficiary under Section 91-8-303(8).

(6) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in Section 91-8-405(a).

(7) "Conservator" means a person appointed by the court to administer the estate of a minor or adult individual as defined in Section 93-20-102.

(8) "Directed trust" means a trust where through the terms of the trust, one or more persons are given the authority to direct or consent to a fiduciary's actual or proposed investment decision, distribution decision, or any other decision of the fiduciary.

(9) "Distribution interest" means:

(A) An interest, other than a remainder interest, held by an eligible distributee or permissible distributee under a trust and may be a current distribution interest or a future distribution interest;

(B) A distribution interest is classified as either a mandatory interest, a support interest or a discretionary interest; and although not the exclusive means to create each such respective distribution interest, absent clear and convincing evidence to the contrary, use of the example language accompanying the following definitions of each such respective distribution interest results in the indicated classification of distribution interest:

(i) A mandatory interest means a distribution interest in which the timing of any distribution must occur within one (1) year from the date the right to the distribution arises and the trustee has no discretion in determining whether a distribution shall be made or the amount of such distribution; example distribution language indicating a mandatory interest includes, but is not limited to:

a. All income shall be distributed to a named beneficiary; or

b. One Hundred Thousand Dollars ($100,000.00) a year shall be distributed to a named beneficiary;

(ii) A support interest means a distribution interest that is not a mandatory interest but still contains mandatory language such as "shall make distributions" and is coupled with a standard capable of judicial interpretation; example distribution language indicating a support interest includes, but is not limited to:

a. The trustee shall make distributions for health, education, maintenance, and support;

b. Notwithstanding the distribution language used, if a trust instrument containing such distribution language specifically provides that the trustee exercise discretion in a reasonable manner with regard to a discretionary interest, then notwithstanding any other provision of this subparagraph defining distribution interests, the distribution interest shall be classified as a support interest;

(iii) A discretionary interest means any interest that is not a mandatory or a support interest and is any distribution interest where a trustee has any discretion to make or withhold a distribution; example distribution language indicating a discretionary interest includes, but is not limited to:

a. The trustee may, in the trustee's sole and absolute discretion, make distributions for health, education, maintenance, and support;

b. The trustee, in the trustee's sole and absolute discretion, shall make distributions for health, education, maintenance, and support;

c. The trustee may make distributions for health, education, maintenance, and support;

d. The trustee shall make distributions for health, education, maintenance, and support; however, the trustee may exclude any of the beneficiaries or may make unequal distributions among them; or

e. The trustee may make distributions for health, education, maintenance, support, comfort, and general welfare;

f. A discretionary interest may also be evidenced by:

1. Permissive distribution language such as "may make distributions";

2. Mandatory distribution language that is negated by the discretionary distribution language contained in the trust such as "the trustee shall make distributions in the trustee's sole and absolute discretion";

g. An interest that includes mandatory distribution language such as "shall" but is subsequently qualified by discretionary distribution language shall be classified as a discretionary interest and not as a support or a mandatory interest;

(C)(i) To the extent a trust contains distribution language indicating the existence of any combination of a mandatory, support and discretionary interest, that combined interest of the trust shall be divided and treated separately as follows:

a. The trust shall be a mandatory interest only to the extent of the mandatory distribution language;

b. The trust shall be a support interest only to the extent of such support distribution language; and

c. The remaining trust property shall be held as a discretionary interest;

(ii) For purposes of this subparagraph (C), a support interest that includes mandatory distribution language such as "shall" but is subsequently qualified by discretionary distribution language, shall be classified as a discretionary interest and not as a support interest.

(10) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(11) "Excluded fiduciary" means any trustee, trust advisor, or trust protector to the extent that, under the terms of a trust:

(A) The trustee, trust advisor, or trust protector is excluded from exercising a power, or is relieved of a duty; and

(B) The power or duty is granted or reserved to another person.

(12) "Fiduciary" means:

(A) A trustee, conservator, guardian, agent under any agency agreement or other instrument, an executor, personal representative or administrator of a decedent's estate, or any other party, including a trust advisor or a trust protector, who is acting in a fiduciary capacity for any person, trust, or estate;

(B) For purposes of subparagraph (A), an agency agreement includes, but is not limited to, any agreement under which any delegation is made, either pursuant to Section 91-8-807 or by anyone holding a power or duty pursuant to Article 12;

(C) For purposes of the definition of fiduciary in Section 91-8-103, fiduciary does not mean any person who is an excluded fiduciary as such is defined in Section 91-8-103.

(13) "Guardian" means a person appointed by the court to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual as defined in Section 93-20-102. The term does not include a guardian ad litem.

(14) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(15) "Internal Revenue Code" means the Internal Revenue Code of 1986, as in effect on July 1, 2014, or as later amended.

(16) "Jurisdiction," with respect to a geographic area, includes a state or country.

(17) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(18) "Power of appointment" means:

(A) An inter vivos or testamentary power to direct the disposition of trust property, other than a distribution decision made by a trustee or other fiduciary to a beneficiary;

(B) Powers of appointment are held by the person to whom such power has been given, and not by a settlor in that person's capacity as settlor.

(19) "Power of withdrawal" means a presently exercisable general power of appointment other than a power: (A) exercisable by a trustee and limited by an ascertainable standard; or (B) exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(20) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(21) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

(A) Is a distributee or permissible distributee of trust income or principal;

(B) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) terminated on that date without causing the trust to terminate; or

(C) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(22) "Remainder interest" means an interest under which a trust beneficiary will receive property held by a trust outright at some time during the future.

(23) "Reserved power" means a power held by a settlor.

(24) "Revocable," as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

(25) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one (1) person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

(26) "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary's interest.

(27) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(28) "Successors in interest" means the beneficiaries under the settlor's will, if the settlor has a will, or in the absence of an effective will provision, the settlor's heirs at law.

(29) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(30) "Trust advisor" means any person described in Section 91-8-1201(a).

(31) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

(32) "Trustee" includes an original, additional, and successor trustee, and a cotrustee.

(33) "Trust protector" means any person described in Section 91-8-1201(a).

HISTORY: Laws, 2014, ch. 421, § 3, Laws, 2016, ch. 396, § 1, eff from and after July 1, 2014; Laws, 2019, ch. 463, § 8, eff from and after January 1, 2020.

Cross References — Article 12 of this chapter, see §§ 91-8-1201 through 91-8-1206.
Federal Aspects— Sections 2041 and 2514 of the Internal Revenue Code of 1986, see 26 U.S.C. §§ 2041 and 2514, respectively.

§ 91-8-104. Knowledge.

(a) Subject to subsection (b), a person has knowledge of a fact if the person:

(1) Has actual knowledge of it;

(2) Has received a notice or notification of it; or

(3) From all the facts and circumstances known to the person at the time in question, has reason to know it.

(b) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

HISTORY: Laws, 2014, ch. 421, § 4, eff from and after July 1, 2014.

§ 91-8-105. Default and mandatory rules.

(a) Except as otherwise provided in the terms of the trust, this chapter governs the duties and powers of a trustee or any other fiduciary under this chapter, relations among trustees and such other fiduciaries, and the rights and interests of a beneficiary. The terms of a trust may expand, restrict, eliminate, or otherwise vary the duties and powers of a trustee, any such other fiduciary, relations among any of them, and the rights and interests of a beneficiary; however, nothing contained in this subsection shall be construed to override or nullify the provisions of subsection (b). The rule of statutory construction that statutes in derogation of the common law are to be strictly construed shall have no application to this section. Except as restricted by subsection (b), pursuant to this section, courts shall give maximum effect to the principal of freedom of disposition and to the enforceability of trust instruments.

(b) The terms of a trust prevail over any provision of this chapter except:

(1) The requirements for creating a trust;

(2) The duty of a trustee to act in good faith in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(3) The requirement that a trust and its terms be for the benefit of its beneficiaries as the interests of such beneficiaries are defined under the terms of the trust, and that the trust have a purpose that is lawful and possible to achieve;

(4) The power of the court to modify or terminate a trust under Sections 91-8-410 through 91-8-416;

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5 of the Uniform Trust Code (Title 91, Chapter 8, Article 5, Mississippi Code of 1972);

(6) The power of the court under Section 91-8-702 to require, dispense with, or modify or terminate a bond;

(7) The power of the court under Section 91-8-708(b) to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) Subject to subsection (d), the duty under Section 91-8-813(b) to notify beneficiaries of an irrevocable trust (including anyone who holds a power of appointment) who have attained twenty-five (25) years of age that the trust has been established as set forth in Section 91-8-813(b);

(9) Subject to subsection (d), the duty under Section 91-8-813(a)(1) and (2) to keep the beneficiaries (including anyone who holds a power of appointment) informed and to respond to the request of a beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of the trust;

(10) The effect of an exculpatory term under Section 91-8-1008;

(11) The rights under Sections 91-8-1010 through 91-8-1013 of a person other than a trustee or beneficiary;

(12) Periods of limitation for commencing a judicial proceeding;

(13) The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

(14) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in Sections 91-8-203 and 91-8-204.

(c) Any purpose enunciated as a material purpose of a trust in that trust's trust instrument shall be treated as a material purpose of that trust for all purposes of this chapter.

(d) Notwithstanding subsection (b)(8) and (9) of this section, the duties of a trustee to give notice, information and reports under Section 91-8-813(a) and (b) may be waived or modified in the trust instrument or by the settlor of the trust, or a trust protector or trust advisor that holds the power to so direct, directs otherwise in a writing delivered to the trustee in any of the following ways:

(1) By waiving or modifying such duties as to all qualified beneficiaries during the lifetime of the settlor or the settlor's spouse;

(2) By specifying a different age at which a beneficiary or class of beneficiaries must be notified under Section 91-8-813(b); or

(3) With respect to one or more of the beneficiaries, by designating a beneficiary surrogate to receive such notice, information and reports who will act in good faith to protect the interests of the beneficiary or beneficiaries.

HISTORY: Laws, 2014, ch. 421, § 5, Laws, 2016, ch. 396, § 2, eff from and after July 1, 2014; Laws, 2020, ch. 406, § 86, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in (a)(5), substituted "Article 5 of the Uniform Trust Code (Title 91, Chapter 8, Article 5, Mississippi Code of 1972)" for "the Family Trust Preservation Act, Section 91-9-501 et seq."; and in (a)(8), deleted "that" following "set forth in."

JUDICIAL DECISIONS

1. Accounting.

In light of Miss. Code Ann. § 91-8-105(a), a trustee of an educational trust did not have to agree to an accounting, and the chancery court could not compel it unless there was some evidence of mismanagement or fraud. While the accounting was not as thorough as it could be, it was sufficient to show that the chancellor did not abuse his discretion in ratifying it. Fuller v. Kelly (In re Fuller), 203 So. 3d 1147, 2016 Miss. App. LEXIS 733 (Miss. Ct. App. 2016).

§ 91-8-106. Common law of trusts; principles of equity.

The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another statute of this state.

HISTORY: Laws, 2014, ch. 421, § 6, eff from and after July 1, 2014.

§ 91-8-107. Governing law.

(a) The validity, construction and administration of a trust are determined by the law of the jurisdiction designated in the terms of the trust instrument.

(b) In the absence of a controlling designation in the terms of the trust, the laws of the jurisdiction where the trust was executed determine the validity of the trust, construction of the trust instrument and the laws of descent, while the laws of the principal place of administration determine the administration of the trust.

HISTORY: Laws, 2014, ch. 421, § 7, eff from and after July 1, 2014.

§ 91-8-108. Principal place of administration.

(a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, the terms of a trust designating the principal place of administration are valid and controlling if:

(1) A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction;

(2) All or part of the administration occurs in the designated jurisdiction; administration includes, but is not limited to:

(A) Maintenance of some trust records physically in the designated jurisdiction;

(B) Wholly or partly preparing or arranging for the preparation, either on an exclusive or a nonexclusive basis, in the designated jurisdiction of an income tax return that must be filed for the trust; or

(3) Some or all of the trust assets are deposited in the designated jurisdiction or physical evidence of the assets is held in the designated jurisdiction and the trust is being administered by a person defined in subsection (a)(1). For purposes of this subsection (a)(3), "deposited in the designated jurisdiction," includes assets being held in any checking account, time deposit, certificate of deposit, brokerage account, trust company fiduciary account, or other similar account or deposit that is located in the designated jurisdiction.

(b) Except as otherwise expressly provided by the terms of a governing instrument specifically addressing the governing law for trust administration or by court order, the laws of this state shall govern the administration of a trust while the trust is administered in this state. Without precluding other means for establishing that a trust is administered in this state, if any of the activities described in subsection (a) occur in this state, the trust is administered in this state.

(c) A trustee shall administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries; however, a trustee shall not be required, in the absence of a court order, to transfer the trust's principal place of administration to another state or to a jurisdiction outside the United States even though such other state or jurisdiction outside the United States could also be appropriate to its purposes, its administration, and the interests of the beneficiaries.

(d) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee may transfer the trust's principal place of administration to another state or to a jurisdiction outside the United States, if the transfer is to a place appropriate to the trust's purposes, its administration, and the interests of the beneficiaries.

(e) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration to another state or to a jurisdiction outside the United States not less than sixty (60) days before initiating the transfer. The notice of proposed transfer must include:

(1) The name of the jurisdiction to which the principal place of administration is to be transferred;

(2) The address and telephone number at the new location at which the trustee can be contacted;

(3) An explanation of the reasons for the proposed transfer;

(4) The date on which the proposed transfer is anticipated to occur; and

(5) The date, not less than sixty (60) days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(f) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a majority of the qualified beneficiaries described in Section 91-8-103 notify the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(g) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to Section 91-8-704.

HISTORY: Laws, 2014, ch. 421, § 8, eff from and after July 1, 2014.

§ 91-8-109. Methods and waiver of notice.

(a) Notice to a person under this chapter or the sending of a document to a person under this chapter must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last-known place of residence or place of business, or a properly directed electronic message.

(b) Notice otherwise required under this chapter or a document otherwise required to be sent under this chapter need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(c) Notice under this chapter or the sending of a document under this chapter may be waived by the person to be notified or sent the document.

(d) Notice of a judicial proceeding must be given as provided in the applicable rules of civil procedure.

HISTORY: Laws, 2014, ch. 421, § 9, eff from and after July 1, 2014.

§ 91-8-110. Others treated as qualified beneficiaries.

A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this chapter if the charitable organization, on the date the charitable organization's qualification is being determined:

(1) Is a distributee or permissible distributee of trust income or principal;

(2) Would be a distributee or permissible distributee of trust income or principal if the interests of other distributees or permissible distributees then receiving or eligible to receive distributions terminated on that date without causing the trust to terminate; or

(3) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

HISTORY: Laws, 2014, ch. 421, § 10, eff from and after July 1, 2014.

§ 91-8-111. Nonjudicial settlement agreements.

(a) Except as otherwise provided in subsection (b), the trustee and qualified beneficiaries may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(b) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this chapter or other applicable law.

(c) Matters that may be resolved by a nonjudicial settlement agreement include:

(1) The interpretation or construction of the terms of the trust;

(2) The approval of a trustee's report or accounting;

(3) Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;

(4) The resignation or appointment of a trustee and the determination of a trustee's compensation;

(5) Transfer of a trust's principal place of administration;

(6) Liability of a trustee for an action relating to the trust;

(7) The extent or waiver of bond of a trustee;

(8) The governing law of the trust; and

(9) The criteria for distribution to a beneficiary where the trustee is given discretion.

(d) Any qualified beneficiary or trustee may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in Article 3 was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

HISTORY: Laws, 2014, ch. 421, § 11, eff from and after July 1, 2014.

§ 91-8-112. Rules of construction.

The rules of construction that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

HISTORY: Laws, 2014, ch. 421, § 12, eff from and after July 1, 2014.

ARTICLE 2.

JUDICIAL PROCEEDINGS.

Sec.
91-8-201. Role of court in administration of trust.
91-8-202. Jurisdiction over trustee and beneficiary.
91-8-203. Subject-matter jurisdiction.
91-8-204. Venue.
91-8-205. Judicial accountings and settlements.

§ 91-8-201. Role of court in administration of trust.

(a) The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(b) A trust is not subject to continuing judicial supervision unless ordered by the court.

(c) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including, but not limited to, a proceeding to:

(1) Request instructions;

(2) Determine the existence or nonexistence of any immunity, power, privilege, duty or right;

(3) Approve a nonjudicial settlement;

(4) Interpret or construe the terms of the trust;

(5) Determine the validity of a trust or of any of its terms;

(6) Approve a trustee's report or accounting or compel a trustee to report or account;

(7) Direct a trustee to refrain from performing a particular act or grant to a trustee any necessary or desirable power;

(8) Review the actions or approve the proposed actions of a trustee, including the exercise of a discretionary power;

(9) Accept the resignation of a trustee;

(10) Appoint or remove a trustee;

(11) Determine a trustee's compensation;

(12) Transfer a trust's principal place of administration or a trust's property to another jurisdiction;

(13) Determine the liability of a trustee for an action relating to the trust and compel redress of a breach of trust by any available remedy;

(14) Modify or terminate a trust;

(15) Combine trusts or divide a trust;

(16) Determine liability of a trust for debts of a beneficiary and living settlor;

(17) Determine liability of a trust for debts, expenses of administration, and statutory allowances chargeable against the estate of a deceased settlor;

(18) Determine the liability of a trust for claims, expenses and taxes in connection with the settlement of a trust that was revocable at the settlor's death; and

(19) Ascertain beneficiaries and determine to whom property will pass upon final or partial termination of a trust.

HISTORY: Laws, 2014, ch. 421, § 13, eff from and after July 1, 2014.

§ 91-8-202. Jurisdiction over trustee and beneficiary.

(a) By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(b) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(c) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

HISTORY: Laws, 2014, ch. 421, § 14, eff from and after July 1, 2014.

§ 91-8-203. Subject-matter jurisdiction.

(a) Except as provided in subsections (b) and (c), the chancery court has exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary concerning the administration of a trust.

(b) Any other court granted statutory equitable jurisdiction has concurrent jurisdiction with the chancery court in any proceedings in this state brought by a trustee or beneficiary concerning the administration of a trust.

(c) The chancery court has concurrent jurisdiction with other courts of this state in other proceedings involving a trust.

HISTORY: Laws, 2014, ch. 421, § 15, eff from and after July 1, 2014.

§ 91-8-204. Venue.

(a) Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the county of this state in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

(b) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a county of this state in which a beneficiary resides, in a county in which any trust property is located, and if the trust is created by will, in the county in which the decedent's estate was or is being administered.

HISTORY: Laws, 2014, ch. 421, § 16, eff from and after July 1, 2014.

§ 91-8-205. Judicial accountings and settlements.

(a) A trustee may file an accounting of the trustee's administration of a trust in court at any time and seek a partial or final settlement thereof or, upon petition of an interested party, a court may order a trustee to render an accounting of the trustee's administration of a trust and require a partial or final settlement thereof. Notice of such judicial proceeding shall be provided to the trustee and each beneficiary, or representative thereof pursuant to Article 3, as provided by the applicable rules of civil procedure.

(b) A trust accounting must be a reasonably understandable report from the date of the last accounting or, if none, from the date upon which the trustee became accountable, or other such date the court may set, which provides reasonable detail of the transactions affecting the administration of the trust, and which adequately discloses the following information:

(1) The accounting must identify the trust, the trustee furnishing the accounting, and the time period covered by the accounting.

(2) The accounting must show all receipts and disbursements occurring during the accounting period. Gains and losses realized during the accounting period must also be shown.

(3) The accounting, to the extent feasible, must identify and value trust assets on hand at the close of the accounting period. For each asset or class of assets reasonably capable of valuation, the accounting shall contain two

(2) values, (A) the asset acquisition value or carrying value, and (B) the estimated current value, if feasible. The accounting must identify each known noncontingent liability with an estimated current amount of the liability if known.

(4) To the extent feasible, the accounting must show the significant noncash transactions affecting the assets of the trust, including name changes in investment holdings, adjustments to carrying value, or stock splits.

(5) The accounting must reflect the allocation of receipts and disbursements between income and principal when the allocation affects the interest of any beneficiary of the trust.

(c) Any order or judgment of the court on such accounting and partial or final settlement shall be final and conclusive as to all matters occurring during the accounting period, and appeals therefrom shall and must be taken in the manner provided for from any other final judgment of the court.

HISTORY: Laws, 2014, ch. 421, § 17, eff from and after July 1, 2014.

Cross References — Article 3 of this chapter, see §§ 91-8-301 through 91-8-305.

ARTICLE 3.

REPRESENTATION.

Sec.
91-8-301. Representation: basic effect.
91-8-302. Representation by holder of power of appointment.
91-8-303. Representation by fiduciaries and parents.
91-8-304. Representation by person having substantially identical interest.
91-8-305. Appointment of representative.

§ 91-8-301. Representation: basic effect.

(a) Notice to a person who may represent and bind another person under this article has the same effect as if notice were given directly to the other person.

(b) The consent of a person who may represent and bind another person under this article is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(c) Except as otherwise provided in Sections 91-8-411 and 91-8-602, a person who under this article may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

(d) A settlor may not represent and bind a beneficiary under this article with respect to the termination or modification of a trust under Section 91-8-411(a).

HISTORY: Laws, 2014, ch. 421, § 18, eff from and after July 1, 2014.

§ 91-8-302. Representation by holder of power of appointment.

To the extent there is no material conflict of interest between the holder of a power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

HISTORY: Laws, 2014, ch. 421, § 19, eff from and after July 1, 2014.

§ 91-8-303. Representation by fiduciaries and parents.

To the extent there is no material conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(1) A conservator or guardian may represent and bind the estate that the conservator or guardian controls;

(2) A conservator or guardian may represent and bind the ward if a conservator or guardian of the ward's estate has not been appointed;

(3) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(4) A trustee may represent and bind the beneficiaries of the trust;

(5) A personal representative of a decedent's estate may represent and bind persons interested in the estate;

(6) A parent may represent and bind the person's minor or unborn child if a conservator or guardian for the descendant has not been appointed;

(7) A grandparent may represent the grandparent's grandchild if that grandchild is not already represented by a parent under paragraph (6);

(8) A person designated by the settlor either in the trust instrument or in a writing delivered to the trustee, or designated in a writing delivered to the trustee by a trust protector or trust advisor with power under the terms of the trust instrument to represent the beneficiaries of the trust, may represent and bind the beneficiaries; and

(9) Any person acting in a fiduciary capacity shall exercise all rights and powers granted to a fiduciary under the Revised Uniform Fiduciary Access to Digital Assets Acts created under Chapter 23, Title 91.

HISTORY: Laws, 2014, ch. 421, § 20; Laws, 2016, ch. 396, § 3; Laws, 2017, ch. 419, § 21, eff from and after July 1, 2017.

§ 91-8-304. Representation by person having substantially identical interest.

(a) Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no material conflict of interest between the representative and the person represented.

(b) Unless otherwise represented, whenever survivorship of another person is an express or implied condition of receiving property from a trust, the successor contingent remainder beneficiary may be represented and bound by the presumptive remainder beneficiary upon whose death the rights of the successor contingent remainder beneficiary depend, but only to the extent there is no material conflict of interest between the presumptive remainder beneficiary and the successor contingent remainder beneficiary.

HISTORY: Laws, 2014, ch. 421, § 21, eff from and after July 1, 2014.

§ 91-8-305. Appointment of representative.

(a) If the court determines that an interest is not represented under this article, or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem or other representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown. A guardian ad litem or other representative may be appointed to represent several persons or interests.

(b) A guardian ad litem or other representative may act on behalf of the individual represented with respect to any matter arising under this chapter, whether or not a judicial proceeding concerning the trust is pending.

(c) In making decisions, a guardian ad litem or other representative may consider general benefit accruing to the living members of the individual's family.

HISTORY: Laws, 2014, ch. 421, § 22, eff from and after July 1, 2014.

ARTICLE 4.

CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST.

Sec.

91-8-401. Methods of creating trust.
91-8-402. Requirements for creation.
91-8-403. Trusts created in other jurisdictions.
91-8-404. Trust purposes.
91-8-405. Charitable purposes; enforcement.
91-8-406. Creation of trust induced by fraud, duress, or undue influence.
91-8-407. Evidence of oral trust; trust in land.
91-8-408. Trust for care of animal.
91-8-409. Noncharitable trust without ascertainable beneficiary.
91-8-410. Modification or termination of trust; proceedings for approval or disapproval.
91-8-411. Modification or termination of noncharitable irrevocable trust by consent.
91-8-412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively.
91-8-413. Cy pres.

Sec.
91-8-414. Modification or termination of uneconomic trust.
91-8-415. Reformation to correct mistakes.
91-8-416. Modification to achieve settlor's tax objectives.
91-8-417. Combination and division of trusts.

§ 91-8-401. Methods of creating trust.

A trust may be created by:

(1) Transfer of property to another person as trustee or a transfer in the name of the trust during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

(2) Declaration by the owner of property that the owner holds identifiable property as trustee;

(3) Exercise of a power of appointment in favor of a trustee;

(4) A court pursuant to its statutory or equitable powers; or

(5) By an agent or attorney-in-fact under a power of attorney that:

(A) Expressly grants authority to create the trust; or

(B) Grants the agent or attorney-in-fact the authority to act in the management and disposition of the principal's property that is as broad or comprehensive as the principal could exercise for himself or herself and that does not expressly exclude the authority to create a trust. An agent or attorney-in-fact may file a petition for the court to determine whether a power of attorney described in this section grants the agent or attorney-in-fact authority that is as broad or comprehensive as that which the principal could exercise for himself or herself.

HISTORY: Laws, 2014, ch. 421, § 23; Laws, 2016, ch. 396, § 4, eff from and after July 1, 2014.

§ 91-8-402. Requirements for creation.

(a) A trust is created only if:

(1) The settlor has capacity to create a trust;

(2) The settlor indicates an intention to create the trust;

(3) The trust has a definite beneficiary or is:

(A) A charitable trust;

(B) A trust for the care of an animal, as provided in Section 91-8-408; or

(C) A trust for a noncharitable purpose, as provided in Section 91-8-409;

(4) The trustee has duties to perform; and

(5) The same person is not the sole trustee and sole beneficiary.

(b) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

(d) A settlor is deemed to have the capacity to create a trust if:

(1) The trust is created by an agent of the settlor under a power of attorney as described in Section 91-8-401(5); and

(2) The settlor had capacity to create a trust at the time the power of attorney was executed.

HISTORY: Laws, 2014, ch. 421, § 24, eff from and after July 1, 2014.

§ 91-8-403. Trusts created in other jurisdictions.

A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

(1) The settlor was domiciled, had a place of abode, or was a national;

(2) A trustee was domiciled or had a place of business; or

(3) Any trust property was located.

HISTORY: Laws, 2014, ch. 421, § 25, eff from and after July 1, 2014.

§ 91-8-404. Trust purposes.

A trust may be created only to the extent its purposes are lawful and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries as the interests of such beneficiaries are defined under the terms of the trust.

HISTORY: Laws, 2014, ch. 421, § 26, eff from and after July 1, 2014.

§ 91-8-405. Charitable purposes; enforcement.

(a) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

(c) The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.

HISTORY: Laws, 2014, ch. 421, § 27, eff from and after July 1, 2014.

§ 91-8-406. Creation of trust induced by fraud, duress, or undue influence.

A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

HISTORY: Laws, 2014, ch. 421, § 28, eff from and after July 1, 2014.

§ 91-8-407. Evidence of oral trust; trust in land.

(a) Except as provided in subsection (b) and except as required by a statute other than this chapter, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

(b)(1) No trust of or in any real property can be created except by a written instrument signed by the party who declares or creates such trust (the "settlor"), or by his last will, in writing. Every writing declaring or creating a trust in real property, other than a last will, may be acknowledged and proved as other writing and filed for record with the clerk of the chancery court in which the real property, or part of it, is located, and the filing shall serve as constructive notice of the existence and terms of the trust from and after filing.

(2) In lieu of filing the trust instrument or other writing declaring or creating a trust in real property, there may be filed with the clerk of the chancery court in which the real property, or part of it, is located a memorandum of trust signed by the settlor, trustee, or successor trustee and acknowledged or proved as other writings and the filing of the memorandum of trust shall serve as constructive notice of the existence and terms of the trust from and after filing. The memorandum shall contain substantially all of the following information:

(A) The name of the trust;

(B) The street and mailing address of the office, and the name and street and mailing address and telephone number of the trustee;

(C) The name and street and mailing address and telephone number of the settlor of the trust;

(D) A legally sufficient description of all interests in real property owned by or conveyed to the trust;

(E) The anticipated date of termination of the trust or the event upon which the trust will be terminated; and

(F) The general powers granted to the trustee, which may be by reference to the statutory powers granted to the trustee under the terms of the trust instrument.

The memorandum may also contain the name and street and mailing address and telephone number of any successor trustee. The memorandum of trust may be filed with the clerk of the appropriate chancery court either before or after a deed of conveyance of real property to the trust or trustee, in his capacity as such. The memorandum need not comply with subparagraph (D) if filed before or contemporaneously with a conveyance of any real property to the trust or trustee in his capacity as such, and need not be amended upon a subsequent conveyance of real property to the trust or trustee in his capacity as such, so long as the deed of conveyance is recorded in the appropriate county, and the recording of the deed of conveyance to the trust or trustee, as the case may be, shall constitute compliance with subparagraph (D). In addition, the deed of conveyance may also serve as a memorandum of trust, or an amendment to the memorandum of trust, as the case may be, so long as the deed of conveyance contains the information required for a memorandum of trust as set forth in this subsection (b).

(3) The settlor may amend the memorandum if the trust to which it relates is subject to a power of amendment or revocation by the settlor; otherwise, only the then-serving trustee may amend the memorandum. The memorandum of amendment shall set forth the amendment to the original memorandum with particularity. The amended memorandum of trust may be made effective on a future date, which must be a date certain. The memorandum of amendment may be signed by the creator, trustee or successor trustee, as the case may be, and acknowledged or proved as other writings and filed for record with the clerk of the chancery court where the original memorandum is of record. The filing of the memorandum of amendment shall serve as constructive notice of the existence and terms of the amendment from and after filing.

(4) The provision of Sections 89-5-24 and 89-5-33 shall apply to any trust instrument, memorandum, or amendment that is to be recorded under this subsection (b).

(5) The provisions of this subsection (b) shall have no application to trusts of personal property, or to any trust arising or resulting by implication of law out of a conveyance of land. The failure to file a copy of the trust instrument, memorandum or deed of conveyance shall not affect the validity of the trust or the trust instrument.

(6) A certificate of trust containing the information set forth in Section 91-9-7 that was filed before July 1, 2014, shall be considered constructive notice of the existence and terms of the trust from and after its filing, and the filing of a memorandum of trust under this subsection (b) shall not be necessary.

(c)(1) All property originally brought into the trust or subsequently acquired by purchase or otherwise, on account of the trust, is trust property.

(2) Unless the contrary intention appears, property acquired with trust funds is trust property.

(3) Any estate in real property may be acquired in the trust name. Title so acquired can be conveyed in the trust name or by the trustees, as trustees of the trust.

(4) A conveyance to a trust in the trust name, though without words of inheritance, passes the entire interest in the property of the grantor unless the language of the conveyance reflects an intent to the contrary.

HISTORY: Laws, 2014, ch. 421, § 29; Laws, 2016, ch. 396, § 5, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (b)(6). The reference to "Section 91-8-407(b)" was changed to "this subsection (b)." The Joint Committee ratified the correction at its August 5, 2016, meeting.

Editor's Notes — Section 91-9-7, referenced in this section, was included in former Article 1 of Chapter 9 and related to the filing of a certificate of trust agreement in lieu of an entire trust agreement. It was repealed by § 105 of Chapter 421, Laws of 2014, effective from and after July 1, 2014.

JUDICIAL DECISIONS

Analysis

1. Constructive trust.
2. Express trust.
3. Resulting trust.

1. Constructive trust.

Trial court properly granted a church's motion for summary judgment because no express or implied trust existed between it and a Presbyterian denomination; no constructive trust was implied by law because the church purchased the property at issue, and no evidence existed that the denomination invested any funds into the acquisition of any of the parcels of land. Presbytery of St. Andrew v. First Presbyterian Church PCUSA of Starkville, 240 So. 3d 399, 2018 Miss. LEXIS 163 (Miss. 2018).

2. Express trust.

Trial court properly granted a church's motion for summary judgment because no express or implied trust existed between it and a Presbyterian denomination; no traditional express trust nor any legally enforceable and separate traditional trust instrument existed or existed that would operate to vest a beneficial interest in and over the legally titled property of the church to the denomination because no reference existed in any deed to creation of a trust relationship. Presbytery of St. Andrew v. First Presbyterian Church PCUSA of Starkville, 240 So. 3d 399, 2018 Miss. LEXIS 163 (Miss. 2018).

3. Resulting trust.

Trial court properly granted a church's motion for summary judgment because no express or implied trust existed between it and a Presbyterian denomination; there was no evidence of a resulting trust because when the church was incorporation no intention to create a trust or create an express trust relationship existed, and the church opted out of a trust provision placed in the constitution when the denomination was formed. Presbytery of St. Andrew v. First Presbyterian Church PCUSA of Starkville, 240 So. 3d 399, 2018 Miss. LEXIS 163 (Miss. 2018).

§ 91-8-408. Trust for care of animal.

(a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one (1) animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. In addition, a person having a demonstrated interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

HISTORY: Laws, 2014, ch. 421, § 30, eff from and after July 1, 2014.

§ 91-8-409. Noncharitable trust without ascertainable beneficiary.

Except as otherwise provided in Section 91-8-408, Section 41-43-51 or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than twenty-one (21) years;

(2) A trust authorized by this section may be enforced by a person appointed under the terms of the trust, or if no person is so appointed, by a person appointed by the court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

HISTORY: Laws, 2014, ch. 421, § 31; Laws, 2016, ch. 396, § 6, eff from and after July 1, 2014.

§ 91-8-410. Modification or termination of trust; proceedings for approval or disapproval.

(a) In addition to the methods of termination prescribed by Sections 91-8-411 through 91-8-414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful or impossible to achieve.

(b) A proceeding to approve or disapprove a proposed modification or termination under Sections 91-8-411 through 91-8-416, or trust combination or division under Section 91-8-417, may be commenced by a trustee or beneficiary. The settlor of a charitable trust may maintain a proceeding to modify the trust under Section 91-8-413.

(c) Nothing in this section or this chapter is intended to create or imply a duty for a trustee to make or seek approval of a modification, termination, combination or division, and a trustee is not liable for not making or seeking approval of a modification, termination, combination or division.

HISTORY: Laws, 2014, ch. 421, § 32, eff from and after July 1, 2014.

§ 91-8-411. Modification or termination of noncharitable irrevocable trust by consent.

(a) During the settlor's lifetime, a noncharitable irrevocable trust may be modified or terminated by the trustee upon consent of all qualified beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust if the settlor does not object to the proposed modification or termination. The trustee shall notify the settlor of the proposed modification or termination not less than sixty (60) days before initiating the modification or termination. The notice of modification or termination must include:

(1) An explanation of the reasons for the proposed modification or termination;

(2) The date on which the proposed modification or termination is anticipated to occur; and

(3) The date, not less than sixty (60) days after the giving of notice, by which the settlor must notify the trustee of an objection to the proposed modification or termination.

(b) Following the settlor's death, a noncharitable irrevocable trust may be terminated upon consent of all of the qualified beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the qualified beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

(c) Upon termination of a trust under subsection (a) or (b), the trustee shall distribute the trust property as agreed by the qualified beneficiaries.

(d) If not all of the qualified beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b), the modification or termination may be approved by the court if the court is satisfied that:

(1) If all of the qualified beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) The interests of a qualified beneficiary who does not consent will be adequately protected.

(e) Solely for purposes of this section, the term "noncharitable irrevocable trust" refers to a trust that is not revocable by the settlor with respect to which:

(1) No federal or state income, gift, estate or inheritance tax charitable deduction was allowed upon transfers to the trust; and

(2) The value of all interests in the trust owned by charitable organizations does not exceed five percent (5%) of the value of the trust.

(f) Notwithstanding subsection (a), the trustee may seek court approval of a modification or termination.

HISTORY: Laws, 2014, ch. 421, § 33; Laws, 2016, ch. 396, § 7, eff from and after July 1, 2014.

§ 91-8-412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively.

(a) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

(b) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

HISTORY: Laws, 2014, ch. 421, § 34, eff from and after July 1, 2014.

§ 91-8-413. Cy pres.

(a) Except as otherwise provided in subsection (b), if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, obsolete or ineffective:

(1) The trust does not fail, in whole or in part;

(2) The trust property does not revert to the settlor or the settlor's successors in interest; and

(3) The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner that fulfills as nearly as possible the settlor's charitable intent and purposes.

(b) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection (a) to apply cy pres to modify or terminate the trust only if, when the provision takes effect:

(1) The trust property is to revert to the settlor and the settlor is still living; or

(2) Fewer than twenty-one (21) years have elapsed since the date of the trust's creation.

HISTORY: Laws, 2014, ch. 421, § 35, eff from and after July 1, 2014.

§ 91-8-414. Modification or termination of uneconomic trust.

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than One Hundred Fifty Thousand Dollars ($150,000.00) may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(b) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property to or for the benefit of the beneficiaries, in such shares as the trustee, or the court in a court proceeding, determines, after taking into account the interests of income and remainder beneficiaries so as to conform as nearly as possible to the intention of the settlor, but a trust that qualified for the marital deduction for tax purposes shall only be distributed to the spouse of the settlor for whom the trust was created.

(d) This section does not apply to an easement for conservation or preservation.

(e) This section shall not limit the right of a trustee, acting alone, to terminate a trust in accordance with applicable provisions of the governing instrument.

HISTORY: Laws, 2014, ch. 421, § 36, eff from and after July 1, 2014.

§ 91-8-415. Reformation to correct mistakes.

The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence what the settlor's intention was and that the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

HISTORY: Laws, 2014, ch. 421, § 37, eff from and after July 1, 2014.

§ 91-8-416. Modification to achieve settlor's tax objectives.

To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

HISTORY: Laws, 2014, ch. 421, § 38, eff from and after July 1, 2014.

§ 91-8-417. Combination and division of trusts.

(a) After notice to the qualified beneficiaries, a trustee may combine two (2) or more trusts into a single trust or divide a trust into two (2) or more separate trusts, if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the trust. In addition to any other combination or division the result of which does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the trust, a combination or division pursuant to subsection (d) of this section shall not be considered as impairing the rights of any beneficiary or adversely affecting the achievement of the purposes of the trust. If the trusts to be combined or divided have different trustees, the trustees may negotiate the terms of the combined or divided trusts, including which trusts will be the surviving trust or trusts, who will be the trustee or trustees of the surviving trust or trusts and any other matter relating to the operation of the surviving trust or trusts.

(b) In addition to combining two (2) or more trusts into a single trust or dividing a trust into two (2) or more separate trusts, a trustee, after notice to the qualified beneficiaries, may segregate by allocation to a separate account or trust a specific amount from, a portion of, or a specific asset included in the trust property of any trust to reflect a disclaimer, to reflect or result in differences in federal tax attributes, to satisfy any federal tax requirement, to make federal tax elections, to reduce potential generation-skipping transfer tax liability, or for any other tax planning purposes or other reasons.

(c) A separate trust created by severance or segregation must be treated as a separate trust for all purposes from the effective date in which the severance or segregation is effective. The effective date of the severance or segregation may be retroactive. In managing, investing, administering, and distributing the trust property of any separate account or trust and in making applicable tax elections, the trustee may consider the differences in federal tax attributes and all other factors the trustee believes pertinent and may make disproportionate distributions from the separate trusts or accounts created.

(d) A trust or account created by consolidation, severance, or segregation under this section shall not be considered as impairing the rights of a beneficiary if the trust is held on terms and conditions that are substantially equivalent to the terms of the trust before consolidation, severance, or segregation so that the aggregate interests of each beneficiary are substantially equivalent to the beneficiary's interests in the trust or trusts before consolidation, severance, or segregation. In determining whether a beneficiary's aggregate interests are substantially equivalent, the trustee shall consider the economic value of those interests to the extent they can be valued, considering actuarial factors as appropriate. If a beneficiary's interest cannot be valued with any reasonable degree of certainty because of the nature of the trust property, the terms of the trust, or other reasons, the trustee shall base the determination upon such other factors as are reasonable and appropriate under the facts and circumstances applicable to that particular trust, including the purposes of the trust. However, the terms of any trust before consolidation, severance or segregation which permit qualification of that trust for an applicable federal tax deduction, exclusion, election, exemption, or other special federal tax status must remain identical in the consolidated trust or in each of the separate trusts or accounts created by severance or segregation.

(e) A trustee who acts in good faith is not liable to any person for taking into consideration differences in federal tax attributes and other pertinent factors in administering trust property of any separate account or trust, in making tax elections, and making distributions pursuant to the terms of the separate trust.

(f) Income earned on a consolidated or severed or segregated amount, portion, or specific asset after the consolidation or severance is effective passes with that amount, portion or specific asset.

(g) This section applies to all trusts whenever created, whether before, on, or after July 1, 2014, and whether the trusts are inter vivos or testamentary, are created by the same or different instruments, by the same or different persons and without regard to where created or administered.

(h) This section does not limit the right of a trustee acting in accordance with the applicable provisions of the governing instrument to divide or consolidate trusts.

(i) Nothing contained in this section shall be construed as granting to any trustee a general power of appointment over any trust not otherwise expressly granted in the trust instrument.

HISTORY: Laws, 2014, ch. 421, § 39, eff from and after July 1, 2014.

ARTICLE 5.

CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS.

Sec.
91-8-501. Application of Article 5; rights of beneficiary's creditor or assignee.
91-8-502. Spendthrift provision.
91-8-503. Discretionary interests; effect thereof.
91-8-504. Creditors' claims against settlor.
91-8-505. Distributions relative to support, mandatory and certain remainder interests.
91-8-506. Personal obligations of trustee.
91-8-507. Removal or replacement power over trustee or other fiduciary not reachable by holder's creditors; interests of beneficiary who is also a trustee or other fiduciary not reachable.
91-8-508. Judicial foreclosure of beneficial interests, powers of appointment, and reserved powers prohibited; certain reaches prohibited.

§ 91-8-501. Application of Article 5; rights of beneficiary's creditor or assignee.

This Article 5 applies to a creditor's or assignee's claims and ability to reach mandatory, support and discretionary interests regardless of whether such interests are subject to a spendthrift provision. To the extent not otherwise prohibited by this Article 5, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's distribution interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

HISTORY: Laws, 2020, ch. 406, § 59, eff from and after July 1, 2020.

§ 91-8-502. Spendthrift provision.

(a) Except as provided in Section 91-8-505, if the trust instrument provides that a beneficiary's interest in a trust is not subject to voluntary or involuntary transfer, the beneficiary's interest in the trust may not be transferred and is not subject to the enforcement of a money judgment until paid to the beneficiary.

(b) A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(c) A spendthrift provision applies to all beneficial interests, including distribution interests whether with respect to income or principal or both, and remainder interests.

(d) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision, and a creditor or assignee of the beneficiary may not reach the interest or a present, future or prospective distribution by the trustee before its receipt by the beneficiary. Similarly, a creditor or assignee of the beneficiary may not force a distribution from the trust. This subsection (d) remains applicable regardless of the beneficiary's potential right to force a distribution under Section 91-8-814.

(e) Notwithstanding any other provision of this section to the contrary or whether a beneficiary has an outstanding creditor, a trustee, cotrustee, or other fiduciary of a trust subject to a spendthrift provision may directly pay any expense on behalf of the beneficiary and may exhaust the income and principal of the trust for the benefit of the beneficiary. A trustee, cotrustee or other fiduciary is not liable to any creditor for paying the expenses of a beneficiary under a trust subject to a spendthrift provision. This subsection (e) remains applicable whether the beneficiary for whom the direct payment was made held a mandatory, support, discretionary or remainder interest.

HISTORY: Laws, 2020, ch. 406, § 60, eff from and after July 1, 2020.

§ 91-8-503. Discretionary interests; effect thereof.

(a) A discretionary interest is neither a property interest nor an enforceable right; it is a mere expectancy.

(b) Relative to a discretionary interest, whether or not a trust contains a spendthrift provision:

(1) A creditor or assignee cannot force or otherwise reach a distribution with regard to a discretionary interest;

(2) A creditor or assignee cannot require a trustee, cotrustee or other fiduciary to exercise the trustee's, cotrustee's or other fiduciary's discretion to make a distribution with regard to a discretionary interest;

(3) Whether or not a beneficiary has any outstanding creditors or assignees, a trustee, cotrustee or other fiduciary of a discretionary interest may directly pay any expense on behalf of the beneficiary and may exhaust the income and principal of the trust for the benefit of the beneficiary;

(4) A trustee, cotrustee or other fiduciary is not liable to any creditor or assignee for paying the expenses of a beneficiary of a discretionary interest;

(5)(A) Whether or not a beneficiary holding a discretionary interest is also a trustee, cotrustee or other fiduciary, subsections (b)(1) through (4) remain applicable if:

(i) The beneficiary-fiduciary does not have the discretion to make or participate in making distributions to such beneficiary-fiduciary;

(ii) The beneficiary-fiduciary's discretion to make or participate in making distributions to such beneficiary-fiduciary is limited by an ascertainable standard; or

(iii) The beneficiary-fiduciary's discretion to make or participate in making distributions to such beneficiary-fiduciary is exercisable only with the consent of a cotrustee or another person holding an adverse interest.

(B) A creditor or assignee may compel or otherwise reach a distribution only to the extent the creditor or assignee may compel or otherwise reach a distribution if the beneficiary was not acting as a trustee, cotrustee or other fiduciary.

HISTORY: Laws, 2020, ch. 406, § 61, eff from and after July 1, 2020.

§ 91-8-504. Creditors' claims against settlor.

(a) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(2) Except as provided in the Mississippi Qualified Disposition in Trust Act and subsections (a)(3) through (5) regarding an irrevocable special needs trust, a creditor or assignee of the settlor of an irrevocable trust may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one (1) settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(3) For the purposes of this section, "irrevocable special needs trust" means an irrevocable trust established for the benefit of one or more disabled persons, which includes, but is not limited to, an individual who is disabled as defined in 42 U.S.C. Section 1382c(a), as well as an individual who is disabled as defined in any similar federal, state or other jurisdictional law or regulation, or has a condition that is substantially equivalent to one that qualifies the person as disabled under such a provision, even if not officially found to be disabled by a governmental body, if one (1) of the purposes of the trust, expressed in the trust instrument or implied from the trust instrument, is to allow the disabled person to qualify or continue to qualify for public, charitable or private benefits that might otherwise be available to the disabled person. The existence of one or more nondisabled remainder beneficiaries of the trust does not disqualify it as an irrevocable special needs trust for the purposes of this section.

(4) A creditor or assignee of the settlor of an irrevocable special needs trust, as defined in subsection (a)(3), may not reach or compel distributions from the special needs trust, to or for the benefit of the settlor of the special needs trust, or otherwise, whether or not the irrevocable special needs trust complies with, and irrespective of the requirements of, the Mississippi Qualified Disposition in Trust Act.

(5) Notwithstanding any law to the contrary, neither a creditor nor any other person shall have any claim or cause of action against the trustee or other fiduciary, or an advisor of an irrevocable special needs trust. For purposes of this subsection (a)(5), an advisor of an irrevocable special needs trust includes any person involved in the counseling, drafting, preparation, execution or funding of an irrevocable special needs trust.

(6) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was

revocable immediately preceding the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, and the expenses of the settlor's funeral and disposal of remains subject to the following:

(A) With respect to claims, expenses, and taxes in connection with the settlement of the settlor's estate, any claim of a creditor that would be barred against the fiduciary of a settlor's estate, the estate of the settlor, or any creditor or beneficiary of the settlor's estate shall be barred against the trust property of a trust that was revocable at the settlor's death, the trustee of the revocable trust, and the creditors and beneficiaries of the trust.

(B) Unless a personal representative of the settlor's estate has been appointed or an application or petition for appointment of a personal representative of the settlor's estate is pending, the trustee at any time may give notice to any person the trustee has reason to believe may have a claim against the settlor at death, at the claimant's last known address. The notice shall contain the name and address of the trustee to whom the claim must be presented and provide information that failure to present the claim to the trustee within ninety (90) days of the date of the notice will forever bar the claim. If the person fails to present the claim in writing within ninety (90) days from the date of the notice, then the person is forever barred from asserting or recovering on the claim from the trustee, the trust property and the creditors and beneficiaries of the trust. A person who presents a claim on or before the date specified in the notice may not later increase the claim following the expiration of the ninety-day period.

(C) Unless a personal representative of the settlor's estate has been appointed or an application or petition for appointment of a personal representative of the settlor's estate is pending, a trustee may also publish in some newspaper in the county of the decedent's last residence a notice requiring all persons having unknown claims against the settlor to present their claims to the trustee, which notice shall state that failure to present the claim to the trustee within ninety (90) days of the date after the first publication of the notice will forever bar the claim. The notice must be published for three (3) consecutive weeks, and proof of publication must be maintained with the books and records of the trust. If a person fails to present a claim in writing within ninety (90) days from the date of first publication, that person shall be forever barred from asserting or recovering on the claim from the trustee, the trust property and the creditors and beneficiaries of the trust. A person who presents a claim on or before ninety (90) days from first publication may not later increase the claim following the expiration of the ninety-day period.

(D) In addition to subsection (a)(6)(B) and (a)(6)(C), if a claim is not presented in writing to the personal representative of the settlor's estate or to the trustee: (i) within six (6) months from the date of the appointment of the initial personal representative of the settlor's estate; or (ii) if no personal representative is appointed within six (6) months from the settlor's date of death and a claim is not presented in writing to the trustee within six (6) months from the settlor's date of death, a trustee is not chargeable for any assets that the trustee may pay or distribute in good faith in satisfaction of any lawful claims, expenses, or taxes or to any beneficiary before the claim was presented. A payment or distribution of assets by a trustee is deemed to have been made in good faith unless the creditor can prove that the trustee had actual knowledge of the claim at the time of the payment or distribution. The six-month period shall not be interrupted or affected by the death, resignation, or removal of a trustee, except that the time during which there is no trustee in office shall not be counted as part of the period.

(E) A claim presented to the trustee under subsection (a)(6)(B) or (a)(6)(C) must contain substantially the same information as required in Section 91-7-149.

(F) The provisions of Section 91-7-261 detailing the priority of payment of claims, expenses, and taxes from the probate estate of a decedent apply to a revocable trust to the extent the assets of the settlor's probate estate are inadequate and the personal representative or creditor or taxing authority of the settlor's estate has perfected its right to collect from the settlor's revocable trust.

(G) If a personal representative has been appointed for the settlor's estate, assets of the trust shall abate pari passu with assets of the settlor's estate. If no personal representative has been appointed for the settlor's estate, assets of the trust shall abate in the same order of preference as would apply to a decedent's estate.

(H) Nothing in this paragraph (6) obligates a trustee to seek appointment of a personal representative of a settlor's estate, and a trustee is not liable to any beneficiary or other third party for failure to do so.

(b) For purposes of this section during the period a power of withdrawal may be exercised or upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of:

(1) The amount specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986 (26 U.S.C. Section 2041(b)(2) and Section 2514(e));

(2) If the donor of the property subject to holder's power of withdrawal is not married at the time of the transfer of property to the trust, the amount specified in Section 2503(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 2503(b)); or

(3) If the donor of the property subject to holder's power of withdrawal is married at the time of the transfer of property to the trust, twice the amount specified in Section 2503(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 2503(b)).

(4) A power to withdraw is not considered to exceed the greater of the amounts specified in subsection (b)(1) through (3) if the amount subject to a withdrawal right granted to the holder in any calendar year does not exceed the greater of such amounts even if the total amount subject to the holder's

power to withdraw exceeds the greater of such amounts in any subsequent calendar year.

(5) Except to the extent provided in this subsection (b), a person who is the holder of a power of withdrawal is not considered a settlor of the trust by failing to exercise the power of withdrawal, releasing the power of withdrawal, or waiving the power of withdrawal.

(c) For purposes of subsection (a)(2), the following are not considered an amount that may be distributed to or for the settlor's benefit:

(1) The power of a trustee of an irrevocable trust, whether arising under the trust agreement or any other provision of law, to make a distribution to or for the benefit of a settlor for the purpose of reimbursing the settlor in an amount equal to any income taxes payable on any portion of the trust principal and income that are includable in the settlor's personal income under applicable law, as well as distributions made by the trustee under such authority; and

(2) The power of the settlor to exercise any of the powers described in Section 675 of the Internal Revenue Code of 1986 (26 U.S.C. Section 675).

(d) Property contributed to the following trusts is not considered to have been contributed by the settlor, and a person who would otherwise be treated as a settlor or deemed settlor of the following trusts may not be treated as a settlor:

(1) An irrevocable inter vivos marital trust if:

(A) The settlor is a beneficiary of the trust after the death of the settlor's spouse; and

(B) The trust is treated as:

(i) Qualified terminable interest property under Section 2523(f), Internal Revenue Code of 1986; or

(ii) A general power of appointment trust under Section 2523(e), Internal Revenue Code of 1986;

(2) An irrevocable inter vivos trust of which the settlor's spouse is a beneficiary if the settlor is a beneficiary of the trust after the death of the settlor's spouse; or

(3) An irrevocable trust for the benefit of any person to the extent that the property of the trust was subject to a power of appointment in another person, whether the settlor's interest was created by the lapse or exercise of such power.

The effect of this subsection (d) shall be that the power of a trustee, and any benefit resulting to the settlor, whether arising under the trust agreement or any other provision of the law, to make a distribution to or for the benefit of a settlor or to otherwise permit the settlor to use or benefit from trust property following the death of the settlor's spouse, shall not be considered an amount that may be distributed to or for the settlor's benefit for purposes of subsection (a)(2).

(e) A beneficiary is not considered to be a settlor, to have made a voluntary or involuntary transfer of the beneficiary's interest in the trust, or to have the power to make a voluntary or involuntary transfer of the beneficiary's interest in the trust, merely because the beneficiary holds, exercises, waives, releases, or allows to lapse:

(1) A presently exercisable power to:

(A) Consume, invade, appropriate, or distribute property to or for the benefit of the beneficiary, if the power is:

(i) Exercisable only on consent of another person holding an interest adverse to the beneficiary's interest; or

(ii) Limited by an ascertainable standard, including health, education, support, or maintenance of the beneficiary;or

(B) Appoint any property of the trust to or for the benefit of a person other than the beneficiary, a creditor of the beneficiary, the beneficiary's estate, or a creditor of the beneficiary's estate;

(2) A testamentary power of appointment; or

(3) A presently exercisable right described by subsection (b).

(f) For purposes of subsection (a)(2) and subsection (g), a person who becomes a beneficiary of a trust due to the exercise of a power of appointment by someone other than such person shall not be considered a settlor of the trust.

(g)(1) Notwithstanding Section 15-3-115, no person shall bring an action with respect to a transfer of property to a spendthrift trust if the person is a creditor when the transfer is made, unless the action is commenced within the later of two (2) years after the transfer is made or six (6) months after the person discovers or reasonably should have discovered the transfer; and

(2) If subsection (g)(1) applies:

(A) A person is deemed to have discovered the existence of a transfer at the time any public record is made of the transfer, including, but not limited to, a conveyance of real property that is recorded in the office of the county register of deeds of the county in which the property is located or the filing of a financing statement Uniform Commercial Code, or the equivalent recording or filing of either with the appropriate person or official under the laws of a jurisdiction other than this state;

(B) A creditor cannot bring an action with respect to a transfer of property to a spendthrift trust unless that creditor proves by clear and convincing evidence that the settlor's transfer to the trust was made with the intent to defraud that specific creditor; and

(i) Notwithstanding any law to the contrary, a creditor or any other person does not have a claim or cause of action against the trustee, other fiduciary, or an advisor of a spendthrift trust if that claim or cause of action is based in any way on any person making use of the benefits of this subsection (g);

(ii) For purposes of subsection (g)(2)(B), an advisor of a spendthrift trust includes, but is not limited to, any person involved in the counseling, drafting, preparation, execution or funding of a spendthrift trust;

(iii) For purposes of subsection (g)(2)(B)(i), counseling, drafting, preparation, execution or funding of a spendthrift trust includes the counseling, drafting, preparation, execution and funding of a limited partnership, a limited liability company or any other type of entity if interests in the limited partnership, limited liability company or other entity are subsequently transferred to a spendthrift trust;

(3) Notwithstanding subsection (g)(2)(B), in the same manner as provided other than by this section to trusts in general, a beneficiary, settlor, cotrustee, trust advisor or trust protector retains the right to bring a claim against a trustee or against another cotrustee, trust advisor, trust protector or any of their predecessors; however, no such claim shall arise solely because a person used, or attempted to use, the benefits of this subsection (g);

(4) If more than one (1) transfer of property is made to a spendthrift trust, the subsequent transfer of property to the spendthrift trust shall be disregarded for the purpose of determining whether a person may bring an action under this subsection (g) with respect to a prior transfer of property to the spendthrift trust; any distribution to a beneficiary from the spendthrift trust shall be deemed to have been made from the most recent transfer made to the spendthrift trust;

(5) With the exception of a claim brought under subsection (g)(3), notwithstanding any other law, no action of any kind, including, without limitation, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity against the trustee, other fiduciary or advisor of a spendthrift trust if, as of the date the action is brought, an action by a creditor with respect to a transfer of property to the spendthrift trust would be barred under this subsection (g); and

(6) This subsection (g) shall not abridge the rights of a creditor, to the extent otherwise provided by this section, to reach the maximum amount that can be distributed to or for the settlor's benefit under a spendthrift trust.

HISTORY: Laws, 2020, ch. 406, § 62, eff from and after July 1, 2020.

§ 91-8-505. Distributions relative to support, mandatory and certain remainder interests.

(a) Relative to a support interest, whether or not a trust contains a spendthrift provision:

(1) Although a beneficiary of a support interest has enforceable rights under Section 91-8-814, those rights do not raise the beneficiary's support interest to the level of a property interest;

(2) No creditor or assignee shall reach that support interest until a distribution from the support interest is actually made to the beneficiary;

(3) After all or a portion of a support interest is distributed to the beneficiary, no portion of the distribution made from the support interest shall be reached by a creditor or assignee of the beneficiary except to the extent that the distribution made from the support interest exceeds the

amount necessary for the health, education, maintenance and support of the beneficiary who received the distribution made from the support interest;

(4) In the case of a beneficiary who holds a support interest, the use or enjoyment of property belonging to the trust by that beneficiary shall not be transferred and shall not be reached by creditors or assignees of that beneficiary;

(5) Regardless of whether a beneficiary has any outstanding creditors or assignees, a trustee or other fiduciary of a support interest may directly pay any expense on behalf of the beneficiary and may exhaust the income and principal of the trust for the benefit of the beneficiary; and

(6) A trustee or other fiduciary is not liable to any creditor or assignee for paying the expenses of a beneficiary of a support interest.

(b) Relative to a mandatory interest, whether or not a trust contains a spendthrift provision:

(1) While a court may order a trustee or other fiduciary to distribute a past-due mandatory distribution to its beneficiary, no court shall order a trustee or other fiduciary to distribute such past-due mandatory distribution directly to a creditor or assignee;

(2) Regardless of whether a beneficiary has any outstanding creditors or assignees, a trustee or other fiduciary of a mandatory interest may directly pay any expense on behalf of the beneficiary and may exhaust the income and principal of the trust for the benefit of the beneficiary;

(3) A trustee or other fiduciary is not liable to any creditor or assignee for paying the expenses of a beneficiary of a mandatory interest.

(c) Although a remainder interest may be an enforceable right, where it is not absolutely certain based on the language of the trust that the remainder interest will be distributed within one (1) year, it shall not be classified as a property interest. This subsection (c) does not affect eligibility for any public assistance program administered by the Department of Human Services.

HISTORY: Laws, 2020, ch. 406, § 63, eff from and after July 1, 2020.

§ 91-8-506. Personal obligations of trustee.

Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

HISTORY: Laws, 2020, ch. 406, § 64, eff from and after July 1, 2020.

§ 91-8-507. Removal or replacement power over trustee or other fiduciary not reachable by holder's creditors; interests of beneficiary who is also a trustee or other fiduciary not reachable.

(a) A creditor or assignee of a beneficiary does not have the power to reach an interest of a beneficiary or any other person who holds an unconditional or conditional removal or replacement power over a trustee or other fiduciary.

Such power over a trustee or other fiduciary is personal to the holder and shall not be exercised by the holder's creditors. No court shall direct a holder to exercise the power.

(b) Subject to Section 91-8-504(b)(3):

(1) A creditor or assignee of a beneficiary may not reach an interest of a beneficiary who is also a trustee, cotrustee or other fiduciary, or otherwise compel a distribution because the beneficiary is then serving as a trustee, cotrustee or other fiduciary; and

(2) A court may not foreclose against a beneficiary's interest described in subsection (a).

HISTORY: Laws, 2020, ch. 406, § 65, eff from and after July 1, 2020.

§ 91-8-508. Judicial foreclosure of beneficial interests, powers of appointment, and reserved powers prohibited; certain reaches prohibited.

Regardless of whether a trust contains a spendthrift provision:

(1) No beneficial interest, power of appointment, or reserved power in a trust shall be judicially foreclosed.

(2) Trust property subject to a power of appointment is not subject to the claims of the creditors of the holder of the power of appointment or to any permitted appointee unless and until such trust property is distributed pursuant to the exercise of such power of appointment and then only to the extent of the claims of the creditors of the appointee.

(3) A creditor or an assignee of a beneficiary of a residuary interest in a trust has no interest in trust property until trust property is actually distributed to such assignee of the residuary interest and therefore trust property is not subject to claims of a creditor of the assignee.

(4) A power of appointment is not a property interest.

HISTORY: Laws, 2020, ch. 406, § 66, eff from and after July 1, 2020.

ARTICLE 6.

REVOCABLE TRUSTS.

Sec.
91-8-601. Capacity of settlor of revocable trust.
91-8-602. Revocation or amendment of revocable trust.
91-8-603. Settlor's powers; powers of withdrawal.
91-8-604. Limitation on action contesting validity of revocable trust; distribution of trust property.

§ 91-8-601. Capacity of settlor of revocable trust.

The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will. To be effective as a post-death disposition of property transferred during the transferor's life or by the transferor's will to a trust of which the transferor is the settlor or deemed to be the settlor, neither a revocable nor an irrevocable trust existing on or executed after July 1, 2014, has to be executed with the formalities of a will.

HISTORY: Laws, 2014, ch. 421, § 40, eff from and after July 1, 2014.

§ 91-8-602. Revocation or amendment of revocable trust.

(a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection (a) does not apply to a trust created under an instrument executed before July 1, 2014.

(b) If a revocable trust is created or funded by more than one (1) settlor:

(1) To the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;

(2) To the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution;

(3) At the death of one (1) settlor, each surviving settlor shall have the right to revoke the trust as to the surviving settlor's portion of the trust as determined by the type of property in accordance with subsection (b)(1) or (2); and

(4) Upon the revocation or amendment of the trust by fewer than all of the settlors or upon the death of one (1) of the settlors, the trustee shall promptly notify the other settlors of the revocation, amendment or death.

(c) The settlor may revoke or amend a revocable trust:

(1) By substantial compliance with a method provided in the terms of the trust; or

(2) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) A later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(B) Any other method manifesting clear and convincing evidence of the settlor's intent; however, a written revocable trust may only be amended and revoked by a later written instrument delivered to the trustee.

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs. However, with respect to community property under subsection (b)(1), the trustee shall deliver the property one-half (½) to each spouse unless the trust instrument specifically states otherwise.

(e) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

(f) A conservator or guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

(g) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

HISTORY: Laws, 2014, ch. 421, § 41, eff from and after July 1, 2014.

§ 91-8-603. Settlor's powers; powers of withdrawal.

(a) While a trust is revocable rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(b) If a revocable trust has more than one (1) settlor, the duties of the trustee are owed to all of the settlors having capacity to revoke the trust.

(c) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

HISTORY: Laws, 2014, ch. 421, § 42, eff from and after July 1, 2014.

§ 91-8-604. Limitation on action contesting validity of revocable trust; distribution of trust property.

(a) A person may commence a judicial proceeding to contest the validity of all or part of the terms of a trust that was revocable at the settlor's death within the earlier of:

(1) Two (2) years after the settlor's death; or

(2) One hundred and twenty (120) days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

(b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is subject to liability for doing so only if:

(1) The trustee knows of a pending judicial proceeding contesting the validity of all or part of the terms of the trust; or

(2) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty (60) days after the contestant sent the notification.

(c) A beneficiary of a trust that is determined by a court proceeding to be invalid, in whole or in part, is liable to return to the court any distribution received for proper distribution to the extent that the invalidity applies to the distribution. If the beneficiary refuses to return the distribution after being ordered by the court, the beneficiary shall be liable for all costs incurred for recovery of the distribution.

HISTORY: Laws, 2014, ch. 421, § 43, eff from and after July 1, 2014.

ARTICLE 7.

OFFICE OF TRUSTEE.

Sec.

91-8-701. Accepting or declining trusteeship.
91-8-702. Trustee's bond.
91-8-703. Cotrustees.
91-8-704. Vacancy in trusteeship; appointment of successor.
91-8-705. Resignation of trustee.
91-8-706. Removal of trustee.
91-8-707. Delivery of property by former trustee.
91-8-708. Compensation of trustee, trust advisor and trust protector.
91-8-709. Reimbursement of expenses.
91-8-710. Directed trusts.
91-8-711. Directed trusts; accepting or declining fiduciary appointment.
91-8-712. Directed trusts; fiduciary's bond.
91-8-713. Vacancy; directed trusts.
91-8-714. Directed trusts; resignation of fiduciary.
91-8-715. Directed trusts; removal of fiduciary.

§ 91-8-701. Accepting or declining trusteeship.

(a) Except as otherwise provided in subsection (c), a person designated as trustee accepts the trusteeship:

(1) By substantially complying with a method of acceptance provided in the terms of the trust; or

(2) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

(c) A person designated as trustee, without accepting the trusteeship, may:

(1) Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and

(2) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

HISTORY: Laws, 2014, ch. 421, § 44, eff from and after July 1, 2014.

§ 91-8-702. Trustee's bond.

(a) A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

(b) The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

(c) A state or national bank, savings institution, or trust company authorized to exercise fiduciary powers and regulated by the Office of the Comptroller of the Currency, Office of Thrift Supervision, the Mississippi Department of Banking and Consumer Finance, or equivalent state banking supervisors need not give bond, even if required by the terms of the trust.

HISTORY: Laws, 2014, ch. 421, § 45, eff from and after July 1, 2014.

§ 91-8-703. Cotrustees.

(a) Cotrustees who are unable to reach a unanimous decision after consultation among all the cotrustees may act by majority decision.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(c) A cotrustee must participate in the performance of a trustee's function and consult with the other cotrustees unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may delegate to a cotrustee the performance of a function other than a function that the terms of the trust instrument expressly require the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(f) Except as otherwise provided in subsection (g), a trustee who does not join in an action of another trustee is not liable for the action.

(g) Each trustee shall exercise reasonable care to:

(1) Prevent a cotrustee from committing a serious breach of trust; and

(2) Compel a cotrustee to redress a serious breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

(i) A trustee, trust advisor and trust protector shall keep each cotrustee, trust advisor, trust protector and any other fiduciary reasonably informed about the administration of the trust, to the extent the trustee, trust advisor or trust protector has knowledge that each such cotrustee, trust advisor, trust protector or other fiduciary does not have knowledge of the trustee's, trust advisor's or trust protector's actions, or regarding other material information or the availability of such information, related to the administration of the trust that would be reasonably necessary for each cotrustee, trust advisor, trust protector or other fiduciary to perform his or her duties as a trustee, trust advisor, trust protector or other fiduciary of the trust.

HISTORY: Laws, 2014, ch. 421, § 46; Laws, 2016, ch. 396, § 8, eff from and after July 1, 2014.

§ 91-8-704. Vacancy in trusteeship; appointment of successor.

(a) A vacancy in a trusteeship occurs if:

(1) A person designated as trustee rejects the trusteeship;

(2) A person designated as trustee cannot be identified or does not exist;

(3) A trustee resigns;

(4) A trustee is disqualified or removed;

(5) A trustee dies; or

(6) A conservator or guardian is appointed for an individual serving as trustee.

(b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

(c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

(1) By a person designated in the terms of the trust to act as successor trustee;

(2) By a person appointed by unanimous agreement of the qualified beneficiaries; or

(3) By a person appointed by the court.

(d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

(1) By a person designated in the terms of the trust to act as successor trustee;

(2) By a person selected by the unanimous agreement of the charitable organizations expressly designated to receive distributions under the terms of the trust if the Attorney General does not affirmatively object within thirty (30) days of receipt of notice of the person selected; or

(3) By a person appointed by the court.

(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

HISTORY: Laws, 2014, ch. 421, § 47, eff from and after July 1, 2014.

§ 91-8-705. Resignation of trustee.

(a) A trustee may resign:

(1) Upon at least thirty (30) days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or

(2) With the approval of the court.

(b) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(c) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

HISTORY: Laws, 2014, ch. 421, § 48, eff from and after July 1, 2014.

§ 91-8-706. Removal of trustee.

(a) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

(b) The court may remove a trustee if:

(1) The trustee has committed a serious breach of trust;

(2) Lack of cooperation among cotrustees substantially impairs the administration of the trust;

(3) Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

(4) There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under Section 91-8-1001(b) as may be necessary to protect the trust property or the interests of the beneficiaries.

HISTORY: Laws, 2014, ch. 421, § 49, eff from and after July 1, 2014.

§ 91-8-707. Delivery of property by former trustee.

(a) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(b) A trustee who has resigned or been removed shall, within a reasonable time, deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

HISTORY: Laws, 2014, ch. 421, § 50, eff from and after July 1, 2014.

§ 91-8-708. Compensation of trustee, trust advisor and trust protector.

(a) If the terms of a trust do not specify the trustee's, trust advisor's, or trust protector's compensation, and if the settlor, if living, or otherwise a majority of the qualified beneficiaries as defined in Section 91-8-103, have not otherwise agreed with the trustee, trust advisor, or trust protector, a trustee, trust advisor, or trust protector is entitled to compensation that is reasonable under the circumstances.

(b) If the terms of a trust specify the trustee's, trust advisor's, or trust protector's compensation, the trustee, trust advisor, or trust protector is entitled to be compensated as specified in the trust, but the court may allow more or less compensation if:

(1) The duties of the trustee, trust advisor, or trust protector are substantially different from those contemplated when the trust was created; or

(2) The compensation specified by the terms of the trust would be unreasonably low or high.

(c) Factors for the court to consider in deciding upon a trustee's, trust advisor's, or trust protector's compensation shall include the size of the trust, the nature and number of the assets, the income produced, the time and responsibility required, the expertise required, any management or sale of real property or closely held business interests, any involvement in litigation to protect trust property, and other relevant factors.

(d) Subject to the court's authority as provided in subsection (b), regardless of its form of entity, the fees set forth in the published fee schedule of a trustee, trust advisor, or trust protector that is regulated by the Mississippi Department of Banking and Consumer Finance, the equivalent regulatory agency of another state, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision shall be presumed to be reasonable, unless otherwise provided by the terms of the trust.

HISTORY: Laws, 2014, ch. 421, § 51, eff from and after July 1, 2014.

§ 91-8-709. Reimbursement of expenses.

(a) A trustee, trust advisor, or trust protector is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

(1) Expenses that were properly incurred in the administration of the trust, including the defense or prosecution of any action, whether successful or not, unless the trustee is determined to have willfully or wantonly committed a material breach of trust; and

(2) To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(b) An advance by the trustee, trust advisor, or trust protector or by a person named in Section 91-8-701(c)(1) of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

HISTORY: Laws, 2014, ch. 421, § 52, eff from and after July 1, 2014.

§ 91-8-710. Directed trusts.

If the terms of the trust require a trustee, trust advisor, or trust protector to follow the direction of a trust advisor or trust protector, and the trustee, trust advisor, or trust protector acts in accordance with the direction, then the trustee, trust advisor, or trust protector so directed shall be treated as an excluded fiduciary.

HISTORY: Laws, 2014, ch. 421, § 53, eff from and after July 1, 2014.

§ 91-8-711. Directed trusts; accepting or declining fiduciary appointment.

(a) A trust advisor, trust protector, or other fiduciary other than a cotrustee, the cotrustee already being provided for in Section 91-8-701(a), may accept its appointment as the respective fiduciary in a like manner as provided for a trustee under Section 91-8-701(a).

(b) A trust advisor, trust protector, or other fiduciary other than a cotrustee, the cotrustee already being provided for in Section 91-8-701(b), may reject its appointment as the respective fiduciary in a like manner as provided for a trustee under Section 91-8-701(b).

(c) A trust advisor, trust protector, or other fiduciary other than a cotrustee, the cotrustee already being provided for in Section 91-8-701(c), may, without accepting its appointment as the respective fiduciary, carry out the appropriate activities relative to the respective fiduciary as are provided for a trustee under Section 91-8-701(c).

HISTORY: Laws, 2014, ch. 421, § 54, eff from and after July 1, 2014.

§ 91-8-712. Directed trusts; fiduciary's bond.

(a) Section 91-8-702 applies to trust advisors, trust protectors, or other fiduciaries other than cotrustees, the cotrustees already being provided for in Section 91-8-702.

(b) When exercising its powers under this section, the court shall consider the powers, duties, and liabilities relative to the respective fiduciaries other than a cotrustee and whether any of the respective fiduciaries are excluded fiduciaries.

HISTORY: Laws, 2014, ch. 421, § 55, eff from and after July 1, 2014.

§ 91-8-713. Vacancy; directed trusts.

(a) Except as otherwise provided by the terms of the trust upon obtaining knowledge of a vacancy in the office of trust advisor or trust protector, the trustee shall be vested with any fiduciary power or duty that otherwise would be vested in the trustee but that by the terms of the trust was vested in the trust advisor or trust protector, until such time that the vacancy in the office of trust advisor or trust protector, as applicable, is filled.

(b) The vacancy shall be filled in the same manner as would a vacancy in trusteeship that is required to be filled, either as provided by Section 91-8-704(c) if the trust is a noncharitable trust, or as provided by Section 91-8-704(d) if the trust is a charitable trust. Section 91-8-704(e) shall also apply relative to trust advisors and trust protectors in the same manner as that subsection does to trustees and vacancies in trusteeship.

(c) Notwithstanding subsection (a), a trustee shall not be liable for failing to exercise or assume any power or duty held by a trust advisor or trust protector and conferred upon the trustee by subsection (a) for the one-hundred-twenty-day period immediately following the date the trustee obtains knowledge of the vacancy.

HISTORY: Laws, 2014, ch. 421, § 56, eff from and after July 1, 2014.

§ 91-8-714. Directed trusts; resignation of fiduciary.

(a) A trust advisor, trust protector, or other fiduciary other than a cotrustee, a cotrustee's resignation already being provided for in Section 91-8-705, may resign its appointment as the respective fiduciary in a like manner as provided for a trustee under Section 91-8-705.

(b) When exercising its powers under this section relative to resignation, the court shall consider the powers, duties, and liabilities relative to the respective fiduciaries other than a cotrustee and whether any of the respective fiduciaries are excluded fiduciaries.

HISTORY: Laws, 2014, ch. 421, § 57, eff from and after July 1, 2014.

§ 91-8-715. Directed trusts; removal of fiduciary.

(a) A trust advisor, trust protector, or other fiduciary other than a cotrustee, a cotrustee's removal already being provided for in Section 91-8-706, may be removed as the respective fiduciary in a like manner as provided for a trustee under Section 91-8-706.

(b) When exercising its powers under this section relative to removal of the respective fiduciary, the court shall consider the powers, duties, and liabilities relative to the respective fiduciaries other than a cotrustee and whether any of the respective fiduciaries are excluded fiduciaries.

HISTORY: Laws, 2014, ch. 421, § 58, eff from and after July 1, 2014.

ARTICLE 8.

DUTIES AND POWERS OF TRUSTEE.

Sec.	
91-8-801.	Duty to administer trust.

Sec.	
91-8-802.	Duty of loyalty.
91-8-803.	Impartiality.
91-8-804.	Prudent administration.
91-8-805.	Costs of administration.
91-8-806.	Trustee's skills.
91-8-807.	Delegation by trustee.
91-8-808.	Powers to direct.
91-8-809.	Control and protection of trust property.
91-8-810.	Recordkeeping and identification of trust property.
91-8-811.	Enforcement and defense of claims.
91-8-812.	Collecting trust property.
91-8-813.	Duty to inform and report.
91-8-814.	Exercise of powers over discretionary and other interests; tax savings.
91-8-815.	General powers of trustee.
91-8-816.	Specific powers of trustee.
91-8-817.	Distribution upon termination.

§ 91-8-801. Duty to administer trust.

Upon acceptance of a trusteeship, the trustee shall administer the trust until such time as the trust terminates or a successor trustee is appointed and all assets are delivered in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this chapter.

HISTORY: Laws, 2014, ch. 421, § 59, eff from and after July 1, 2014.

§ 91-8-802. Duty of loyalty.

(a) A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in Section 91-8-1012 or as may otherwise be allowed under Mississippi law, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(1) The transaction was authorized by the terms of the trust;

(2) The transaction was approved by the court;

(3) The beneficiary did not commence a judicial proceeding within the time allowed by Section 91-8-1005;

(4) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with Section 91-8-1009; or

(5) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(c) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(1) The trustee's spouse;

(2) The trustee's descendants, siblings, parents, or their spouses;

(3) An agent or attorney of the trustee; or

(4) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(d) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(e) In addition to all other permissible investments and delegatable duties listed in this title, so long as they are fairly priced and in accordance with the interest of the beneficiaries and the interests of the fiduciary's appointment and otherwise comply with the Mississippi Uniform Prudent Investor Act or Article 12 of this chapter, a fiduciary may purchase, sell, hold or otherwise deal with an affiliate or an interest in an affiliated investment, as well as delegate to an affiliate or other agent associated with the fiduciary and, upon satisfaction of the conditions stated in subsection (g), the fiduciary may receive fiduciary compensation from the account at the same rate as the fiduciary would otherwise be entitled to be compensated. These activities shall occur without any presumption of a conflict between personal and fiduciary interests of the trustee or other fiduciary.

(f) As used in this section:

(1) "Affiliate" means any corporation or other entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with the fiduciary.

(2) "Affiliated investment" means an investment for which the fiduciary or an affiliate of the fiduciary acts as adviser, administrator, distributor, placement agent, underwriter, broker or in any other capacity for which it receives or has received a fee or commission from the investment or an investment acquired or disposed of in a transaction for which the fiduciary or an affiliate of the fiduciary receives or has received a fee or commission. "Affiliated investment" also means an investment in an insurance contract purchased from an insurance agency owned by, or affiliated with, the fiduciary, or any of its affiliates.

(3) "Delegate to an affiliate or associated agent" means a proper delegation of any duty of the fiduciary to any person or entity that is affiliated with, or associated with, the fiduciary. The action of doing any of the above shall be known as a "delegation to an affiliate or associated agent."

(4) "Fee or commission" means compensation paid to a fiduciary or an affiliate thereof on account of its services to or on behalf of an investment.

(5) For purposes of this section, "fiduciary" means any fiduciary as defined in Section 91-8-103, as well as any other fiduciary.

(6) "Investment" shall mean any security as defined in Section 2(a)(1) of the Securities Act of 1933, any contract of sale of a commodity for future delivery within the meaning of Section 2(i) of the Commodity Exchange Act, or any other asset permitted for fiduciary accounts pursuant to the terms of

the Mississippi Uniform Prudent Investor Act or by the terms of the governing instrument, including by way of illustration and not limitation: shares or interests in a public or private investment fund, including, but not limited to, a public or private investment fund organized as a limited partnership, limited liability company, statutory or common-law business trust, real estate investment trust, joint venture or other general or limited partnership, or an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940.

(g) A fiduciary seeking compensation pursuant to subsection (e) shall, as is applicable relative to the fiduciary's particular appointment, disclose either: to those persons entitled to be kept informed about the administration of a trust under Section 91-8-813(a), subject to the provisions of Sections 91-8-813(d) and 91-8-105(d); to each principal in an agency relationship; or to all current recipients of statements of any other fiduciary account not described above; all fees or commissions paid or to be paid by the account, or received or to be received by an affiliate arising from such affiliated investment or delegation to an affiliate or associated agent. The disclosure required under this subsection (g) may be given either in a copy of the prospectus or any other disclosure document prepared for the affiliated investment under federal or state securities laws or in a written summary that includes all fees or commissions received or to be received by the fiduciary or any affiliate of the fiduciary and an explanation of the manner in which such fees or commissions are calculated, either as a percentage of the assets invested or by some other method. The disclosure shall be made at least annually unless there has been no increase in the rate at which fees or commissions are calculated since the most recent disclosure. Notwithstanding this subsection (g), no such disclosure is required if the governing instrument or a court order expressly authorizes the fiduciary to invest the fiduciary account in affiliated investments or to perform the delegation to an affiliate or associated agent.

(h) A fiduciary that has complied with subsection (g), whether by making the applicable disclosure or by relying on the terms of a governing instrument or court order, shall have full authority to administer an affiliated investment, including the authority to vote proxies thereon, without regard to the affiliation between the fiduciary and the investment or the fiduciary and delegatee, as the case may be.

(i) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(j) The following transactions, if fairly priced and in accordance with the interest of the beneficiaries and the purposes of the trust, are not presumed to be affected by a conflict between the trustee's personal and fiduciary interest if any investment made pursuant to the transaction otherwise complies with the Mississippi Prudent Investor Act:

(1) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee, or any of its affiliates;

(2) Payment of reasonable compensation to the trustee, or any of its affiliates;

(3) A transaction between a trust and another trust, decedent's estate, guardianship, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(4) A deposit of trust money in a regulated financial-service institution operated by the trustee or an affiliate;

(5) An advance by the trustee of money for the protection of the trust;

(6) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliates, provides services in a capacity other than as a trustee provided that any investment made pursuant to the transaction otherwise complies with the Mississippi Prudent Investor Act;

(7) The placing of securities transactions by a trustee through a securities broker that is part of the same company as the trustee, is owned by the trustee, or is affiliated with the trustee;

(8) Any loan from the trustee or its affiliate;

(9) An investment in an insurance contract purchased from an insurance agency owned by, or affiliated with the trustee, or any of its affiliates; or

(10) A delegation and any transaction made pursuant to the delegation from a trustee to an agent that is affiliated or associated with the trustee.

(k) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

HISTORY: Laws, 2014, ch. 421, § 60, eff from and after July 1, 2014.

Cross References — Mississippi Uniform Prudent Investor Act, see § 91-8-901 and § 91-9-601 et seq.

Article 12 of this chapter, see §§ 91-8-1201 through 91-8-1206.

Federal Aspects— Section 2(a)(1) of the Securities Act of 1933, see 15 U.S.C. § 77b(a)(1). Section 2(i) of the Commodity Exchange Act, see 7 U.S.C. § 2(i). The Investment Company Act of 1940, see 15 U.S.C. § 80a-1 et seq.

JUDICIAL DECISIONS

1. Applicability.

Trustee's withdrawals from separate irrevocable trusts were done before the enactment of Mississippi Uniform Trust Code, Miss. Code Ann. §§ 91-8-101 to 91-8-1206. Provisions from that Code could not be applied retroactively to any acts made by the trustee prior to that date when the chancery court entered its amended final judgment finding that the trustee breached a fiduciary duty of loyalty to the other beneficiaries of the trusts. Cassibry v. Cassibry, 217 So. 3d 698, 2017 Miss. App. LEXIS 40 (Miss. Ct. App. 2017).

§ 91-8-803. Impartiality.

If a trust has two (2) or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests and the purposes of the trust.

HISTORY: Laws, 2014, ch. 421, § 61, eff from and after July 1, 2014.

§ 91-8-804. Prudent administration.

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

HISTORY: Laws, 2014, ch. 421, § 62, eff from and after July 1, 2014.

§ 91-8-805. Costs of administration.

In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

HISTORY: Laws, 2014, ch. 421, § 63, eff from and after July 1, 2014.

§ 91-8-806. Trustee's skills.

A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

HISTORY: Laws, 2014, ch. 421, § 64, eff from and after July 1, 2014.

§ 91-8-807. Delegation by trustee.

(a) A trustee may delegate duties and powers that a prudent trustee could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care, skill, and caution to comply with the terms of the delegation.

(c) A trustee who complies with subsection (a) is not liable to the beneficiaries or to the trust for an action or inaction of the agent to whom the function was delegated.

(d) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

HISTORY: Laws, 2014, ch. 421, § 65, eff from and after July 1, 2014.

§ 91-8-808. Powers to direct.

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust or contrary to the normal practice of the trustee in regard to the action requested.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) If a person holds a power to direct pursuant to Article 12 of this chapter, that person is a trust advisor, trust protector, or both. The power holder is subject to all the provisions of Article 12, including any duties prescribed by Article 12 and any provisions that make the power holder a fiduciary. Any trustee or other person that under Article 12 is relieved of any duty or any liability, or is otherwise protected under Article 12, shall be so relieved and otherwise protected.

HISTORY: Laws, 2014, ch. 421, § 66, eff from and after July 1, 2014.

Cross References — Article 12 of this chapter, see §§ 91-8-1201 through 91-8-1206.

§ 91-8-809. Control and protection of trust property.

A trustee shall take reasonable steps to take control of and protect the trust property.

HISTORY: Laws, 2014, ch. 421, § 67, eff from and after July 1, 2014.

§ 91-8-810. Recordkeeping and identification of trust property.

(a) A trustee shall keep adequate records of the administration of the trust.

(b) A trustee shall keep trust property separate from the trustee's own property.

(c) Except as otherwise provided in subsection (d), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two (2) or more separate trusts.

HISTORY: Laws, 2014, ch. 421, § 68, eff from and after July 1, 2014.

§ 91-8-811. Enforcement and defense of claims.

(a) A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

(b) A trustee may abandon or assign any claim that it believes is unreasonable to enforce to one or more of the beneficiaries of the trust holding the claim.

HISTORY: Laws, 2014, ch. 421, § 69, eff from and after July 1, 2014.

§ 91-8-812. Collecting trust property.

A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a former trustee. No successor trustee appointed after the examination of the accounts of a trustee or the waiver of the examination by the beneficiaries shall be responsible for the acts and omissions of the prior trustee.

HISTORY: Laws, 2014, ch. 421, § 70, eff from and after July 1, 2014.

§ 91-8-813. Duty to inform and report.

(a)(1) A trustee shall keep the beneficiaries of the trust that are current mandatory or permissible distributees of trust income or principal, or both, reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests.

(2) Unless unreasonable under the circumstances, a trustee shall respond in a reasonable amount of time to a qualified beneficiary's request for information related to the administration of the trust. Additionally, a qualified beneficiary shall reimburse the trustee for any reasonable expenses incurred in responding to requests for information.

(3) The requirements of subsection (a) shall also apply to the benefit of anyone who, in a capacity other than that of a fiduciary, holds a power of appointment.

(b) The trustee of an irrevocable or nongrantor trust within sixty (60) days after the acceptance and funding of a trust, excluding nominal funding for the trust to have corpus or the depositing of insurance policies on the life of a living person, shall notify each current income beneficiary, each vested ultimate beneficiary of a remainder interest and anyone who, in a capacity other than that of a fiduciary, holds a power of appointment, that the trust has been established.

(1) The required notice shall:

(A) Be sent by first-class mail or personal delivery; and

(B) Consist of either a complete copy of the document establishing the trust together with the trustee's name, address and telephone number or an abstract of the trust, as the trustee, in the trustee's absolute discretion, may choose.

(2) The abstract shall contain:

(A) The name, address and telephone number of each trustee; and

(B) If for a current income beneficiary:

(i) The number of other current income beneficiaries;

(ii) Whether distributions of income are required or discretionary; and

(iii) Whether distributions of principal are permitted and, if so, for what purpose or purposes; and

(C) If for a remainder beneficiary:

(i) The number of other remainder beneficiaries; and

(ii) The conditions that must be met before the beneficiary's share is distributable.

(D) If for anyone who, in a capacity other than that of a fiduciary, holds a power of appointment, all of the information required by subsection (b) necessary or beneficial for that person to effectively determine whether or not to exercise that power of appointment.

(c) Upon the termination of an interest of any one or more of the current income beneficiaries:

(1) The trustee shall similarly notify the income beneficiaries who are takers of the terminated interest of their interest by sending or delivering them the notice required in subsection (b); and

(2) If at that time the period described in subsection (b) has lapsed, the trustee shall similarly notify anyone who, in a capacity other than that of a fiduciary, holds a power of appointment by sending or delivering to the person the notice required in subsection (b).

(d) A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given. Anyone who, in a capacity other than that of a fiduciary, holds a power of appointment has the same power as provided a beneficiary in this subsection to waive reports and other information and to withdraw a waiver previously given.

(e) Subsections (a) and (b) shall not apply to the extent that those provisions are waived or modified in accordance with Section 91-8-105(d).

(f) Subsection (a)(1) and subsection (b) do not apply to a trust created under a trust agreement that became irrevocable before July 1, 2014. Trust law in effect before July 1, 2014, regarding the subject matter of subsection (a)(1) and subsection (b) shall continue to apply to those trusts.

(g) If the trustee of a trust is bound by any written confidentiality restrictions with respect to an asset of a trust, a trustee may require that any beneficiary who is eligible to receive information pursuant to this or any other section of this chapter about the asset shall agree in writing to be bound by the confidentiality restrictions that bind the trustee before receiving the information from the trustee.

(h) A trust advisor, trust protector, or other fiduciary designated by the terms of the trust shall keep each excluded fiduciary designated by the terms of the trust reasonably informed about:

(1) The administration of the trust with respect to any specific duty or function being performed by the trust advisor, trust protector, or other fiduciary to the extent that the duty or function would normally be performed by the excluded fiduciary or to the extent that providing the information to the excluded fiduciary is reasonably necessary for the excluded fiduciary to perform its duties; and

(2) Any other material information that the excluded fiduciary would be required to disclose to the specified beneficiaries under subsection (a) without regard to whether the terms of the trust relieve the excluded fiduciary from providing the information to qualified beneficiaries. Neither the performance nor the failure to perform of a trust advisor, trust protector, or other fiduciary designated by the terms of the trust as provided in this subsection shall affect the limitation on the liability of any excluded fiduciary provided by Article 12 of this chapter.

HISTORY: Laws, 2014, ch. 421, § 71, eff from and after July 1, 2014.

§ 91-8-814. Exercise of powers over discretionary and other interests; tax savings.

(a) Relative to exercise of powers over discretionary and other interests:

(1) "Improper motive" means to demonstrate action such as the following:

(A) A trustee refusing to make or limiting distributions to beneficiaries other than the trustee due to the trustee's self-interest when the trustee also holds a beneficial interest subject to a discretionary interest; or

(B) A trustee making a distribution in excess of an ascertainable standard to himself or herself as beneficiary when the trustee is restricted by an ascertainable standard in the trust.

(2) Unless otherwise provided in the trust:

(A) If the settlor's spouse is named as a beneficiary, the settlor is still living and the trust is classified as a support trust, then the trustee shall consider the resources of the settlor's spouse, including the settlor's obligation of support, before making a distribution; and

(B) In all other cases, unless otherwise provided in the trust, the trustee need not consider the beneficiary's resources in determining whether a distribution should be made.

(b) The following provisions apply only to discretionary interests:

(1) A discretionary interest is neither a property interest nor an enforceable right; it is a mere expectancy;

(2) A court may review a trustee's distribution discretion only if the trustee acts dishonestly, acts with an improper motive, or fails to act, if under a duty to do so;

(3) A reasonableness standard shall not be applied to the exercise of discretion by the trustee with regard to a discretionary interest;

(4) Other than for the three (3) circumstances listed in subsection (b)(2), a court has no jurisdiction to review the trustee's discretion or to force a distribution; and

(5) Absent express language in the trust instrument to the contrary, if the distribution language in a discretionary interest permits unequal distributions between beneficiaries or distributions to the exclusion of other beneficiaries, the trustee may distribute all of the accumulated, accrued, or undistributed income and principal to one (1) beneficiary in the trustee's discretion.

(c) The following provisions apply only to mandatory or support interests:

(1) A beneficiary of a mandatory or a support interest has an enforceable right to a distribution pursuant to a court's review;

(2) A trustee's distribution decision may be reviewed for unreasonableness, dishonesty, improper motivation, or failure to act, if under a duty to do so; and

(3) In the case of a support interest, nothing in this section shall raise a beneficiary's support interest to the level of a property interest.

(d) Unless otherwise provided in subsection (f), and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

(1) A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard; and

(2) A trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(e) A power that is limited or prohibited by subsection (d) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

(f) Subsection (d) shall not apply to:

(1) A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in Section 2056(b)(5) or 2523(e) of the Internal Revenue Code, was previously allowed;

(2) Any trust during any period that the trust may be revoked or amended by its settlor; or

(3) A trust if contributions to the trust qualify for the annual exclusion under Section 2503(c) of the Internal Revenue Code.

HISTORY: Laws, 2014, ch. 421, § 72; Laws, 2016, ch. 396, § 9, eff from and after July 1, 2014.

§ 91-8-815. General powers of trustee.

(a) A trustee, without authorization by the court, may exercise:

(1) Powers conferred by the terms of the trust; and

(2) Except as limited by the terms of the trust:

(A) All powers over the trust property which an unmarried competent owner has over individually owned property;

(B) Any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and

(C) Any other powers conferred by this chapter.

(b) The exercise of a power is subject to the fiduciary duties prescribed by this article.

HISTORY: Laws, 2014, ch. 421, § 73, eff from and after July 1, 2014.

§ 91-8-816. Specific powers of trustee.

(a) Any references contained in a will or trust incorporating by reference the powers enumerated in Section 91-9-101 et seq. will incorporate by reference the powers contained in this section.

(b) Unless the terms of the instrument expressly provide otherwise and without limiting the authority conferred by Section 91-8-815, a trustee may:

(1) Collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(2) Acquire or sell property, for cash or on credit, at public or private sale;

(3) Exchange, partition, or otherwise change the character of trust property;

(4) Deposit trust money in an account in a regulated financial-service institution;

(5) Borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(6) With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(7) With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

(A) Vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(B) Hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(C) Pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

(D) Deposit the securities with a depository or other regulated financial-service institution;

(8) With respect to an interest in real property, construct or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(9) Enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) Grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) Insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(12) Abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) With respect to possible liability for violation of environmental law:

(A) Inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(B) Take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(C) Decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(D) Compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(E) Pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) Pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(16) Exercise elections with respect to federal, state, and local taxes, including allocating capital gains to distributable net income;

(17) Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) Make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, where the trustee has a lien on future distributions for repayment of those loans;

(19) Pledge trust property to guarantee loans made by others to the beneficiary;

(20) Appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(A) Paying it to the conservator or guardian of the beneficiary's estate or, if there is no conservator or guardian of the beneficiary's estate, to the conservator or guardian of the beneficiary;

(B) Paying it to the beneficiary's custodian under the Uniform Transfers to Minors Act, and, for that purpose, creating a custodianship or custodial trust;

(C) If the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

(D) Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(22) On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation and basis for income tax purposes;

(23) Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers;

(26) On termination of the trust, exercise the powers appropriate to windup the administration of the trust and distribute the trust property to the persons entitled to it;

(27) Employ persons, including attorneys, auditors, investment advisors or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of his administrative duties; to act without independent investigation upon their recommendations; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary; and

(28)(A) A trustee may insure the life of any person in which the trustee of the trust has an insurable interest as set forth in Section 83-5-251.

(B) A trustee may retain any life insurance policy contributed to a trust by a settlor, or purchased by the trustee upon the request of the settlor, as an asset of the trust without regard to any lack of diversification caused thereby and without regard to the terms and conditions of the life insurance policy. The trustee shall not be liable for lack of diversification to any beneficiary of a trust for the trustee's retention of the life insurance policy.

(C) With respect to a life insurance policy owned by the trust a trustee may:

(i) Borrow funds from any party, including an insurance company, for the purpose of paying premiums on any policy of insurance owned by the trust and enter into a "split dollar" or other similar arrangement;

(ii) Collaterally assign any policy to a creditor of the trust;

(iii) Exercise any and all rights under any life insurance policy, including the power to pay, forego or adjust the amount of any premium payments, adjust the type and amount of death benefit, receive or apply dividends to premiums or purchase additional insurance, and allocate policy values among any subaccounts available under any variable or similar policy; and

(iv) With the consent of the insured, to sell any policy to a third party in a life settlement or viatical settlement transaction.

HISTORY: Laws, 2014, ch. 421, § 74, eff from and after July 1, 2014.

Cross References — Uniform Transfers to Minors Act, see § 91-20-1 et seq.

§ 91-8-817. Distribution upon termination.

(a) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within thirty (30) days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection. For the purpose of determining the date a proposed distribution was sent, if exact confirmation is unavailable it can be assumed it was received five (5) days after the date of mailing.

(b) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

(c) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

(1) It was induced by improper conduct of the trustee; or

(2) The beneficiary, at the time of the release, did not know of the material facts relating to the alleged breach and the trustee had actual knowledge of the facts relating to the alleged breach.

HISTORY: Laws, 2014, ch. 421, § 75, eff from and after July 1, 2014.

ARTICLE 9.

UNIFORM PRUDENT INVESTOR ACT.

Sec.
91-8-901. Prudent Investor Act incorporated by reference.

§ 91-8-901. Prudent Investor Act incorporated by reference.

Title 91, Chapter 9, Article 13, the Mississippi Uniform Prudent Investor Act, is incorporated in this chapter by reference.

HISTORY: Laws, 2014, ch. 421, § 76, eff from and after July 1, 2014.

ARTICLE 10.

LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE.

Sec.
91-8-1001. Remedies for breach of trust.
91-8-1002. Damages for breach of trust.
91-8-1003. Damages in absence of breach.
91-8-1004. Attorney's fees and costs.
91-8-1005. Limitation of action against trustee by a beneficiary, a trustee, trust advisor or trust protector.
91-8-1006. Reliance on trust instrument.
91-8-1007. Event affecting administration or distribution.
91-8-1008. Exculpation of trustee.
91-8-1009. Beneficiary's consent, release, or ratification.
91-8-1010. Limitation on personal liability of trustee.
91-8-1011. Interest as general partner.
91-8-1012. Protection of person dealing with trustee.
91-8-1013. Certification of trust.
91-8-1014. Enforcement of no-contest, in terrorem or forfeiture provisions.

§ 91-8-1001. Remedies for breach of trust.

(a) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

(b) To remedy a breach of trust that has occurred or may occur, the court may:

(1) Compel the trustee to perform the trustee's duties;

(2) Enjoin the trustee from committing a breach of trust;

(3) Compel the trustee to redress a breach of trust by paying money, restoring property, or other means;

(4) Order a trustee to account;

(5) Appoint a special fiduciary to take possession of the trust property and administer the trust;

(6) Suspend the trustee;

(7) Remove the trustee as provided in Section 91-8-706;

(8) Reduce or deny compensation to the trustee;

(9) Subject to Section 91-8-1012, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or

(10) Order any other appropriate relief whether provided elsewhere in this chapter, available at common law or under equity principles.

HISTORY: Laws, 2014, ch. 421, § 77, eff from and after July 1, 2014.

§ 91-8-1002. Damages for breach of trust.

(a) A trustee who commits a breach of trust is liable to the beneficiaries affected for:

(1) The greater of:

(A) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or

(B) The profit the trustee made by reason of the breach; and

(2) Any measure of damages otherwise provided by law.

(b) Except as otherwise provided in this subsection (b), if more than one (1) trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

HISTORY: Laws, 2014, ch. 421, § 78, eff from and after July 1, 2014.

§ 91-8-1003. Damages in absence of breach.

Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

HISTORY: Laws, 2014, ch. 421, § 79, eff from and after July 1, 2014.

§ 91-8-1004. Attorney's fees and costs.

(a) In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

(b) In a nonjudicial proceeding involving the administration of a trust, the trustee may pay fees, other reasonable costs, and expenses from trust assets where all of the parties to the proceeding agree in writing.

(c) In a mediation or arbitration proceeding involving the administration of a trust, the mediator or arbitrator may award fees, other reasonable costs, and expenses against the assets of the trust.

HISTORY: Laws, 2014, ch. 421, § 80, eff from and after July 1, 2014.

§ 91-8-1005. Limitation of action against trustee by a beneficiary, a trustee, trust advisor or trust protector.

(a) A beneficiary may not commence a proceeding against a trustee for breach of trust more than one (1) year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or beneficiary's representative knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(c) If subsection (a) does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within three (3) years after the first to occur of:

(1) The removal, resignation, or death of the trustee;

(2) The termination of the beneficiary's interest in the trust; or

(3) The termination of the trust.

(d) A trustee may not commence a proceeding against a cotrustee or a former trustee for breach of trust more than one (1) year after the date the trustee or a representative of the trustee was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(e) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the trustee or the trustee's representative knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(f) If subsection (d) does not apply, a judicial proceeding by a trustee against a cotrustee or former trustee for breach of trust must be commenced within three (3) years after the first to occur of:

(1) The removal, resignation, or death of the cotrustee or a former trustee;

(2) The termination of the beneficiary's interest in the trust; or

(3) The termination of the trust.

(g) A trust advisor or trust protector may not commence a proceeding against a trustee or a former trustee for breach of trust more than one (1) year after the date the trust advisor or trust protector or the respective representative of each was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(h) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the trust advisor or trust protector or the respective representative of each knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(i) If subsection (g) does not apply, a judicial proceeding by a trust advisor or trust protector against a trustee or former trustee for breach of trust must be commenced within three (3) years after the first to occur of:

(1) The removal, resignation, or death of the trustee or a former trustee;

(2) The termination of the beneficiary's interest in the trust; or

(3) The termination of the trust.

(j) Notwithstanding subsections (d) through (i), no trustee, trust advisor, or trust protector may commence a proceeding against a trustee or a former trustee if, under subsections (a) through (c) of this section, none of the beneficiaries may commence a proceeding against the cotrustee or former trustee for the breach of trust.

HISTORY: Laws, 2014, ch. 421, § 81, eff from and after July 1, 2014.

Editor's Notes — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in (j) by substituting "subsections (a) through (c) of this section" for "Section 91-8-1005(a) through (c)." The Joint Committee ratified the correction at its July 24, 2014, meeting.

§ 91-8-1006. Reliance on trust instrument.

A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

HISTORY: Laws, 2014, ch. 421, § 82, eff from and after July 1, 2014.

§ 91-8-1007. Event affecting administration or distribution.

If the happening of an event, including marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

HISTORY: Laws, 2014, ch. 421, § 83, eff from and after July 1, 2014.

§ 91-8-1008. Exculpation of trustee.

(a) A provision of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

(1) Relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

(2) Was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

(b) Except for provisions intended to provide protection for carrying out a stated purpose in the trust instrument, an exculpatory provision drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory provision is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

HISTORY: Laws, 2014, ch. 421, § 84, eff from and after July 1, 2014.

§ 91-8-1009. Beneficiary's consent, release, or ratification.

A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

(1) The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) At the time of the consent, release, or ratification, the beneficiary did not know of the material facts relating to the breach and the trustee had actual knowledge of the facts relating to the alleged breach.

HISTORY: Laws, 2014, ch. 421, § 85, eff from and after July 1, 2014.

§ 91-8-1010. Limitation on personal liability of trustee.

(a) Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

(b) Except as otherwise provided in subsection (a) or (c), the debts, obligations and liabilities incurred by a trustee by reason of the ownership, management, or control of trust property in the trustee's fiduciary capacity, shall be enforceable solely against the trust and its property, without any obligation or liability personally being borne by any trustee of the trust.

(c) Except as otherwise limited by state law, a trustee is personally liable for torts committed in the course of administering a trust only if the trustee is personally at fault.

(d) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

HISTORY: Laws, 2014, ch. 421, § 86, eff from and after July 1, 2014.

§ 91-8-1011. Interest as general partner.

(a) Except as otherwise provided in subsection (c) or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to the Uniform Partnership Act, Title 79, Chapter 13, Mississippi Code of 1972, or the Mississippi Limited Partnership Act, Title 79, Chapter 14, Mississippi Code of 1972.

(b) Except as otherwise provided in subsection (c), a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

(c) The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee.

(d) If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

HISTORY: Laws, 2014, ch. 421, § 87, eff from and after July 1, 2014.

Cross References — Uniform Partnership Act, see § 79-13-101 et seq.
Mississippi Limited Partnership Act, see § 79-14-101 et seq.

§ 91-8-1012. Protection of person dealing with trustee.

(a) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without actual knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(b) A person other than a beneficiary who in good faith assists a trustee or deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(c) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(d) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without actual knowledge that the trusteeship has terminated, is protected from liability as if the former trustee were still a trustee.

(e) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

HISTORY: Laws, 2014, ch. 421, § 88; Laws, 2016, ch. 396, § 10, eff from and after July 1, 2014.

§ 91-8-1013. Certification of trust.

(a) Instead of furnishing a copy of the trust instrument to any person to evidence the existence and validity of the trust, the trustee may furnish to the person a certification of trust, signed by the trustee or trustees having signature authority as identified in paragraph (6) of this subsection, attested by a notary public, and shall contain the following:

(1) An affirmation of the current existence of the trust and the date on which the trust came into existence;

(2) The identity of the settlor or settlors;

(3) The identity and address of the currently acting trustee or trustees and may contain the identity and address of the named successor trustee or trustees or a statement that no successor is named;

(4) The administrative or managerial powers of the trustee in a pending transaction or relevant to the request;

(5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

(6) When there are multiple trustees or multiple successor trustees, the signature authority of the trustees indicating whether all or less than all of the currently acting trustees are required to sign in order to exercise various powers of the trustee;

(7) Where there are successor trustees designated, a statement detailing the conditions for their succession or a statement that a third party may rely on the authority of one or more successors without proof of their succession;

(8) The trust's Taxpayer Identification Number, whether a social security number or Employer Identification Number, but only if the trust's identification number is essential to the transaction for which the request for the trust document is made;

(9) The name in which title to trust property may be taken; and

(10) A statement that, to the best of the trustee's knowledge, the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(b) The certification of trust shall not be required to contain the dispositive provisions of a trust that set forth the distribution of the trust estate.

(c) The trustee offering the certification of trust may provide copies of all or any part of the trust document and amendments, if any. Nothing in this section is intended to require or imply an obligation to provide dispositive provisions of the trust or a copy of the entire trust documents and amendments.

(d) A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting. A person who does not have actual knowledge that the facts contained in the certification of trust are incorrect may assume without inquiry the existence of the facts contained in the certification. Actual knowledge shall not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying on the trust certification. Nothing contained in this section shall limit the rights of the beneficiaries of the trust against the trustee. Any person relying on the certification of trust shall be indemnified from the assets of the trust to the extent of the share of the trust attributable to the beneficiary or beneficiaries bringing any action against the person for any costs, damage, attorney fees, or other expenses incurred in defending any action against the person arising for the transaction to which a certification of trust related.

(e) A person's failure to request a certification of trust does not affect the protections provided that person in this section. No inference that the person has not acted in good faith or that the person was negligent may be drawn from the failure of the person to request a certification of trust. Nothing in this section is intended to create an implication that a person is liable for acting in reliance on a certification of trust under circumstances where the requirements of this section are not satisfied.

(f) Nothing in this section shall be construed to require a third party, when presented with a trust certificate, to enter into a contract with a trustee relating to trust assets or obligations, or to preclude a third party from demanding as a precondition to any contract that the trustee provide additional information in order to clarify any ambiguities or inconsistencies in the trust certificate.

(g) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

HISTORY: Laws, 2014, ch. 421, § 89; Laws, 2016, ch. 396, § 18, eff from and after July 1, 2014.

§ 91-8-1014. Enforcement of no-contest, in terrorem or forfeiture provisions.

(a) For the purposes of this section, "no-contest provision" includes a "no-contest provision," "in terrorem provision" or "forfeiture provision" of a trust instrument. A "no-contest provision" means a provision that, if given effect, would reduce or eliminate the interest of any beneficiary of the trust who, directly or indirectly, initiates or otherwise pursues:

(1) Any action to contest the validity of the trust or the terms of the trust;

(2) Any action to set aside or vary the terms of the trust;

(3) Any action to challenge the acts of the trustee or other fiduciary of the trust in the performance of the trustee's or other fiduciary's duties as described in the terms of the trust; or

(4) Any other act or proceedings to frustrate or defeat the settlor's intent as expressed in the terms of the trust.

(b) With regard to whether the beneficiary sought, received or relied upon legal counsel, a no-contest provision shall be enforceable according to the express terms of the no-contest provision without regard to the beneficiary's good or bad faith in taking the action that would justify the complete or partial forfeiture of the beneficiary's interest in the trust under the terms of the no-contest provision unless probable cause exists for the beneficiary taking such action on the grounds of:

(1) Fraud;

(2) Duress;

(3) Revocation;

(4) Lack of testamentary capacity;

(5) Undue influence;

(6) Mistake;

(7) Forgery; or

(8) Irregularity in the execution of the trust instrument.

(c) Subsection (b) shall not apply to:

(1) Any action brought solely to challenge the acts of the trustee or other fiduciary of the trust to the extent that the trustee or other fiduciary has committed a breach of fiduciary duties or breach of trust;

(2) Any action brought by the trustee or any other fiduciary serving under the terms of the trust, unless the trustee or other fiduciary is a beneficiary against whom the no-contest provision is otherwise enforceable;

(3) Any agreement among the beneficiaries and any other interested persons in settlement of a dispute or resolution of any other matter relating to the trust, including, without limitation, any nonjudicial settlement agreement;

(4) Any action to determine whether a proposed or pending motion, petition, or other proceeding constitutes a contest within the meaning of a no-contest provision;

(5) Any action brought by a beneficiary or on behalf of any such beneficiary for a construction or interpretation of the terms of the trust; or

(6) Any action brought by the Attorney General for a construction or interpretation of a charitable trust or a trust containing a charitable interest if a provision exists in a trust purporting to penalize a charity or charitable interest for contesting the trust if probable cause exists for instituting proceedings.

(d) Pursuant to this section, courts shall enforce the settlor's intent as reflected in a no-contest provision to the greatest extent possible.

HISTORY: Laws, 2014, ch. 421, § 90, eff from and after July 1, 2014.

ARTICLE 11.

MISCELLANEOUS PROVISIONS.

Sec.
91-8-1101. Uniformity of application and construction.
91-8-1102. Electronic records and signatures.
91-8-1103. Severability clause.
91-8-1104 and 91-8-1105. [Reserved].
91-8-1106. Application to existing relationships.
91-8-1107. Alter ego.
91-8-1108. Dominion and control over a trust.
91-8-1109. Protection of special needs trusts and other similar trusts for disabled persons.

§ 91-8-1101. Uniformity of application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

HISTORY: Laws, 2014, ch. 421, § 91, eff from and after July 1, 2014.

§ 91-8-1102. Electronic records and signatures.

The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act (15 USC Section 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

HISTORY: Laws, 2014, ch. 421, § 92, eff from and after July 1, 2014.

§ 91-8-1103. Severability clause.

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: Laws, 2014, ch. 421, § 93, eff from and after July 1, 2014.

§§ 91-8-1104 and 91-8-1105. [Reserved].

§ 91-8-1106. Application to existing relationships.

(a) Except as otherwise provided in this chapter:

(1) This chapter applies to all trusts created before, on, or after July 1, 2014;

(2) This chapter applies to all judicial proceedings concerning trusts commenced on or after July 1, 2014;

(3) This chapter applies to judicial proceedings concerning trusts commenced before July 1, 2014, unless the court finds that application of a particular provision of this chapter would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this chapter does not apply and the superseded law applies;

(4) Any rule of construction or presumption provided in this chapter applies to trust instruments executed before July 1, 2014, unless there is a clear indication of a contrary intent in the terms of the trust; and

(5) An act done before July 1, 2014, is not affected by this chapter.

(b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before

July 1, 2014, that statute continues to apply to the right even if it has been repealed or superseded.

HISTORY: Laws, 2014, ch. 421, § 94, eff from and after July 1, 2014.

JUDICIAL DECISIONS

1. Applicability.

Trustee's withdrawals from separate irrevocable trusts were done before the enactment of Mississippi Uniform Trust Code, Miss. Code Ann. §§ 91-8-101 to 91-8-1206. Provisions from that Code could not be applied retroactively to any acts made by the trustee prior to that date when the chancery court entered its amended final judgment finding that the trustee breached a fiduciary duty of loyalty to the other beneficiaries of the trusts. Cassibry v. Cassibry, 217 So. 3d 698, 2017 Miss. App. LEXIS 40 (Miss. Ct. App. 2017).

§ 91-8-1107. Alter ego.

(a) Absent clear and convincing evidence, no settlor of an irrevocable trust may be deemed to be the alter ego of a trustee of such trust.

(b) None of the following factors, by themselves or in combination, may be considered sufficient evidence for a court to conclude that the settlor controls a trustee, or is the alter ego of a trustee of such trust:

(1) Any combination of the factors listed in Section 91-8-1108 regarding dominion and control over a trust;

(2) Isolated occurrences where the settlor has signed checks, made disbursements, or executed other documents related to the trust as a trustee, a trust advisor or a trust protector, when in fact the settlor was not a trustee, trust advisor or trust protector;

(3) Making any requests for distributions on behalf of beneficiaries; or

(4) Making any requests to the trustee to hold, purchase, or sell any trust property.

HISTORY: Laws, 2014, ch. 421, § 95, eff from and after July 1, 2014.

§ 91-8-1108. Dominion and control over a trust.

In the event a person challenges a settlor's or a beneficiary's influence over a trust, none of the following factors, alone or in combination, shall enter into a determination that dominion and control over a trust exists:

(1) The settlor or a beneficiary is serving as a trustee, a trust advisor, a trust protector, or other fiduciary as described in this Title 91;

(2) The settlor or a beneficiary holds an unrestricted power to remove or replace a trustee, a trust advisor, a trust protector, or other fiduciary;

(3) The settlor or a beneficiary is a trust administrator, a general partner of a partnership, a manager of a limited liability company, an officer of a corporation, or holds any other managerial function relative to any type of entity specified in this section, or relative to any other type of entity not so specified, and part or all of the trust property consists of an interest in such entity;

(4) A person related by blood or adoption to the settlor or a beneficiary is appointed as a trustee, a trust advisor, a trust protector, or other fiduciary;

(5) The settlor's or a beneficiary's agent, accountant, attorney, financial advisor, or friend is appointed as a trustee, a trust advisor, a trust protector, or other fiduciary;

(6) A business associate is appointed as a trustee, a trust advisor, a trust protector, or other fiduciary;

(7) A beneficiary holds any power of appointment over any or all of the trust property;

(8) The settlor holds a power to substitute property of equivalent value for property held by the trust, regardless of whether such power is:

(A) Held in a fiduciary or nonfiduciary capacity;

(B) Exercisable with or without the approval of any person in a fiduciary capacity; or

(C) Exercisable with or without the approval of any person having an interest adverse to such settlor;

(9) A trustee, a trust advisor, a trust protector or other fiduciary has the power to loan trust property to the settlor for less than a full and adequate rate of interest or without adequate security;

(10) Any language relative to the power to make any distribution provides for any discretion relative to such distribution;

(11) The trust has only one (1) beneficiary eligible for current distributions; or

(12) The beneficiary is serving as a cotrustee, or as a trust advisor or trust protector under Article 12, or as any other fiduciary.

HISTORY: Laws, 2014, ch. 421, § 96, eff from and after July 1, 2014.

Cross References — Article 12 of this chapter, see §§ 91-8-1201 through 91-8-1206.

§ 91-8-1109. Protection of special needs trusts and other similar trusts for disabled persons.

Notwithstanding the provisions of this chapter that may otherwise be applicable to a trust, no provision thereof shall apply to any special needs trust, supplemental needs trust, or other similar trust established for a person with a disability as a beneficiary, including, without limitation, any trust established pursuant to the provisions of 42 USC Section 1396(p)(d)(4)A or C, as amended from time to time, or other similar federal or state statute, to the extent that the provision would disqualify the trust beneficiary at any time from eligibility for public needs-based assistance benefits for which the beneficiary would otherwise qualify.

HISTORY: Laws, 2014, ch. 421, § 97, eff from and after July 1, 2014.

ARTICLE 12.

TRUST ADVISORS AND TRUST PROTECTORS.

Sec.
91-8-1201. Powers of trust advisors and trust protectors.
91-8-1202. Trust advisors and trust protectors as fiduciaries.
91-8-1203. Trust advisor and trust protector subject to court jurisdiction.
91-8-1204. No duty to review actions of trustee, trust advisor, or trust protector.
91-8-1205. Fiduciary's liability for action or inaction of trustee, trust advisor, and trust protector.
91-8-1206. Limitation of action against trust advisor or trust protector.

§ 91-8-1201. Powers of trust advisors and trust protectors.

(a) A trust protector or trust advisor is any person, and may be a committee of more than one (1) person, other than a trustee, who under the terms of the trust has a power or duty with respect to a trust, including, but not limited to, one or more of the following powers:

(1) The power to modify or amend the trust instrument to achieve favorable tax status or respond to changes in any applicable federal, state, or other tax law affecting the trust, including, but not limited to, any rulings, regulations, or other guidance implementing or interpreting such laws;

(2) The power to amend or modify the trust instrument to take advantage of changes in the rule against perpetuities, laws governing restraints on alienation, or other state laws restricting the terms of the trust, the distribution of trust property, or the administration of the trust;

(3) The power to appoint a successor trust protector or trust advisor;

(4) The power to review and approve a trustee's trust reports or accountings;

(5) The power to change the governing law or principal place of administration of the trust;

(6) The power to remove and replace any trust advisor or trust protector for the reasons stated in the trust instrument;

(7) The power to remove a trustee, cotrustee, or successor trustee, for the reasons stated in the trust instrument, and appoint a successor;

(8) The power to consent to a trustee's or cotrustee's action or inaction in making distributions to beneficiaries;

(9) The power to increase or decrease any interest of the beneficiaries in the trust, to grant a power of appointment to one or more trust beneficiaries, or to terminate or amend any power of appointment granted in the trust;

(10) The power to perform a specific duty or function that would normally be required of a trustee or cotrustee;

(11) The power to advise the trustee or cotrustee concerning any beneficiary;

(12) The power to consent to a trustee's or cotrustee's action or inaction relating to investments of trust assets;

(13) The power to direct the acquisition, disposition, or retention of any trust investment;

(14) The power to terminate all or part of a trust;

(15) The power to veto or direct all or part of any trust distribution;

(16) The power to borrow money with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(17) The power to make loans out of trust property, including, but not limited to, loans to a beneficiary on terms and conditions, including without interest, considered to be fair and reasonable under the circumstances;

(18) The power to vote proxies and exercise all other rights of ownership relative to securities and business entities held by the trust;

(19) The power to select one or more investment advisors, managers or counselors, including, but not limited to, a trustee, and delegate to them any of its powers;

(20) The power to direct the trustee with respect to any additional powers and discretions over investment and management of trust assets provided in the trust instrument;

(21) The power to receive notices, information, and reports otherwise required to be provided to a beneficiary under Section 91-8-813(a) and (b);

(22) The power to represent and bind a beneficiary under Section 91-8-303(8) to the extent there is not material conflict of interest between the trust protector or trust advisor and the beneficiary; and

(23) The power to designate someone to represent and bind a beneficiary under Section 91-8-303(8) to the extent there is no material conflict of interest between the person designated and the beneficiary.

(b) The exercise of a power by a trust advisor or a trust protector shall be exercised in the sole and absolute discretion of the trust advisor or trust protector and shall be binding on all other persons.

(c) Any power of a trust advisor or trust protector to directly or indirectly modify a trust may be granted notwithstanding the provisions of Sections 91-8-410 through 91-8-412 and 91-8-414.

(d) An excluded fiduciary may continue to follow the direction of a trust protector or trust advisor upon the incapacity or death of the grantor of a trust to the extent provided in the trust instrument.

(e) Notwithstanding anything in this section to the contrary, no modification, amendment, or grant of a power of appointment with respect to a trust, all of whose beneficiaries are charitable organizations, may authorize a trust protector or trust advisor to grant a beneficial interest in the trust to any noncharitable interest or purpose.

HISTORY: Laws, 2014, ch. 421, § 98; Laws, 2016, ch. 396, § 11, eff from and after July 1, 2014.

§ 91-8-1202. Trust advisors and trust protectors as fiduciaries.

(a) A trust advisor or trust protector, other than a beneficiary, is a fiduciary with respect to each power granted to the trust advisor or trust protector. In exercising any power or refraining from exercising any power, a trust advisor or trust protector shall act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) A trust advisor or trust protector is an excluded fiduciary with respect to each power granted or reserved exclusively to any one or more other trustees, trust advisors, or trust protectors.

HISTORY: Laws, 2014, ch. 421, § 99, eff from and after July 1, 2014.

§ 91-8-1203. Trust advisor and trust protector subject to court jurisdiction.

By accepting appointment to serve as a trust advisor or trust protector, the trust advisor or the trust protector submits personally to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide otherwise, and the trust advisor or trust protector may be made a party to any action or proceeding relating to a decision, action, or inaction of the trust advisor or trust protector.

HISTORY: Laws, 2014, ch. 421, § 100, eff from and after July 1, 2014.

§ 91-8-1204. No duty to review actions of trustee, trust advisor, or trust protector.

(a) Whenever, pursuant to the terms of a trust, an excluded fiduciary is to follow the direction of a trustee, trust advisor, or trust protector with respect to investment decisions, distribution decisions, or other decisions of the nonexcluded fiduciary, then, except to the extent that the terms of the trust provide otherwise, the excluded fiduciary shall have no duty to:

(1) Review, evaluate, perform investment reviews, suitability reviews, inquiries, or investigations, or in any other way monitor the conduct of the trustee, trust advisor, or trust protector;

(2) Make recommendations or evaluations or in any way provide advice to the trustee, trust advisor, or trust protector or consult with the trustee, trust advisor, or trust protector; or

(3) Communicate with or warn or apprise any beneficiary or third party concerning instances in which the excluded fiduciary would or might have exercised the excluded fiduciary's own discretion in a manner different from the manner directed by the trustee, trust advisor, or trust protector.

(b) Absent provisions in the trust instrument to the contrary, the actions of the excluded fiduciary pertaining to matters within the scope of the trustee, trust advisor, or trust protector's authority, including, but not limited to, confirming that the trustee, trust advisor, or trust protector's directions have been carried out and recording and reporting actions taken at the trustee, trust advisor, or trust protector's direction or other information pursuant to Section 91-8-813, shall be deemed to be administrative actions taken by the excluded fiduciary solely to allow the excluded fiduciary to perform those duties assigned to the excluded fiduciary under the terms of the trust; those administrative actions, as well as any communications made by the excluded fiduciary to the trust advisor, trust protector, or any of their agents or persons they have selected to provide services to the trust, shall not be deemed to constitute an undertaking by the excluded fiduciary to monitor the trustee, trust advisor, or trust protector or otherwise participate in actions within the scope of the trustee's, trust advisor's, or trust protector's authority.

HISTORY: Laws, 2014, ch. 421, § 101, eff from and after July 1, 2014.

§ 91-8-1205. Fiduciary's liability for action or inaction of trustee, trust advisor, and trust protector.

An excluded fiduciary is not liable, either individually or as a fiduciary, for:

(1) Any loss resulting from compliance with a direction of a trustee, trust advisor, or trust protector, including, but not limited to, any loss from the trustee, trust advisor, or trust protector breaching fiduciary responsibilities or acting beyond the trustee's, trust advisor's, or trust protector's scope of authority;

(2) Any loss resulting from any action or inaction of a trustee, trust advisor, or trust protector; or

(3) Any loss that results from the failure of a trustee, trust advisor, or trust protector to take any action proposed by the excluded fiduciary where the action requires the authorization of the trustee, trust advisor, or trust protector, if an excluded fiduciary who had a duty to propose the action timely sought but failed to obtain the authorization.

HISTORY: Laws, 2014, ch. 421, § 102, eff from and after July 1, 2014.

§ 91-8-1206. Limitation of action against trust advisor or trust protector.

(a) A beneficiary may not commence a proceeding against a trust advisor or trust protector for breach of trust more than one (1) year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(b) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or the beneficiary's representative knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(c) If subsection (a) does not apply, a judicial proceeding by a beneficiary against a trust advisor or trust protector for breach of trust must be commenced within three (3) years after the first to occur of:

(1) The removal, resignation, or death of the trust advisor or trust protector;

(2) The termination of the beneficiary's interest in the trust; or

(3) The termination of the trust.

(d) A trustee may not commence a proceeding against a trust advisor or trust protector for breach of trust more than one (1) year after the date the trustee or a representative of the trustee was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(e) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the trustee or the trustee's representative knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(f) If subsection (d) does not apply, a judicial proceeding by a trustee against a trust advisor or trust protector for breach of trust must be commenced within three (3) years after the first to occur of:

(1) The removal, resignation, or death of the trust advisor or trust protector;

(2) The termination of the beneficiary's interest in the trust; or

(3) The termination of the trust.

(g) A trust advisor or trust protector may not commence a proceeding against another trust advisor or another trust protector for breach of trust more than one (1) year after the date the trust advisor or trust protector or the respective representative of each was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(h) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the trust advisor or trust protector or the respective representative of each knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(i) If subsection (g) does not apply, a judicial proceeding by a trust advisor or trust protector against another trust advisor or another trust protector for breach of trust must be commenced within three (3) years after the first to occur of:

(1) The removal, resignation, or death of the other trust advisor or other trust protector;

(2) The termination of the beneficiary's interest in the trust; or

(3) The termination of the trust.

(j) Notwithstanding subsections (d) through (i), no trustee, trust advisor, or trust protector may commence a proceeding against a trust advisor or trust protector or another trust advisor or another trust protector if, under either subsections (a) through (c) or Section 91-8-1005(a) through (c), none of the beneficiaries may commence a proceeding against the trust advisor or trust protector for such breach of trust.

HISTORY: Laws, 2014, ch. 421, § 103, eff from and after July 1, 2014.

CHAPTER 9.

TRUSTS AND TRUSTEES

Article 1.	Trusts — General Provisions [Repealed].	91-9-1
Article 3.	Uniform Trustees' Powers [Repealed].	91-9-101
Article 5.	Resignation and Succession of Trustees [Repealed].	91-9-201
Article 7.	Removal of Trustees [Repealed].	91-9-301
Article 9.	Administration of Private Foundation Trusts, Charitable Trusts, and Split-Interest Trusts.	91-9-401
Article 11.	Family Trust Preservation Act of 1998 [Repealed].	91-9-501
Article 13.	Uniform Prudent Investor Act.	91-9-601
Article 15.	Mississippi Qualified Disposition in Trust Act.	91-9-701

ARTICLE 1.

TRUSTS — GENERAL PROVISIONS.

Sec.
91-9-1 through 91-9-9. Repealed.

§§ 91-9-1 through 91-9-9. Repealed.

Repealed by Laws, 2014, ch. 421, § 105, effective from and after July 1, 2014.

§ 91-9-1. [Codes, 1857, ch. 44, art. 5; 1871, § 2896; 1880, § 1296; 1892, § 4230; 1906, § 4780; Hemingway's 1917, § 3124; 1930, § 3348; 1942, § 269; Laws, 1993, ch. 507, § 2, eff from and after July 1, 1993.]

§ 91-9-2. [Laws, 2002, ch. 393, § 1; Laws, 2003, ch. 442, § 1, eff from and after July 1, 2003.]

§ 91-9-3. [Codes, 1857, ch. 44, art. 6; 1871, § 2897; 1880, § 1297; 1892, § 4231; 1906, § 4781; Hemingway's 1917, § 3125; 1930, § 3349; 1942, § 270; Laws, 1993, ch. 507, § 3, eff from and after July 1, 1993.]

§ 91-9-5. [Codes, 1942, § 1273-10; Laws, 1960, ch. 217, § 10; Laws, 1996, ch. 400, § 44, eff from and after passage (approved March 19, 1996).]

§ 91-9-7. [Laws, 1993, ch. 507, § 1; Laws, 2001, ch. 425, § 1, eff from and after July 1, 2001.]

§ 91-9-9. [Laws, 1994, ch. 589, § 1; reenacted and amended, Laws, 1999, ch. 374, § 3; reenacted and amended, Laws, 2002, ch. 613 , § 1; Laws, 2006, ch. 474, § 18; Laws, 2008, ch. 452, § 3, eff from and after passage (approved Apr. 8, 2008.)]

Editor's Notes — Former § 91-9-1, which was included in former Article 1 of Chapter 9, related to the creation of trusts and confidences.

Former § 91-9-2, which was included in former Article 1 of Chapter 9, authorized trusts to take title to real property.

Former § 91-9-3, which was included in former Article 1 of Chapter 9, required all grants, assignments or transfers of trusts to be in writing.

Former § 91-9-5, which was included in former Article 1 of Chapter 9, related to the filing or producing vouchers by trustees.

Former § 91-9-7, which was included in former Article 1 of Chapter 9, related to the filing of a certificate of trust agreement in lieu of an entire trust agreement.

Former § 91-9-9, which was included in former Article 1 of Chapter 9, provided additional powers, remedies and rights to fiduciaries with respect to compliance with environmental laws. For present similar provisions, see § 91-8-816.

ARTICLE 3.

UNIFORM TRUSTEES' POWERS.

Sec.
91-9-101 through 91-9-119. Repealed.

§§ 91-9-101 through 91-9-119. Repealed.

Repealed by Laws, 2014, ch. 421, § 106, effective from and after July 1, 2014.

§ 91-9-101. [Codes, 1942, § 672-130; Laws, 1966, ch. 372, § 10, eff from and after June 30, 1966.]

§ 91-9-103. [Codes, 1942, § 672-121; Laws, 1966, ch. 372, § 1; Laws, 2006, ch. 474, § 19, eff from and after July 1, 2006.]

§ 91-9-105. [Codes, 1942, § 672-122; Laws, 1966, ch. 372, § 2, eff from and after June 30, 1966.]

§ 91-9-107. [Codes, 1942, § 672-123; Laws, 1966, ch. 372, § 3; Laws, 1990, ch. 547, § 1; Laws, 1994, ch. 589, § 2; Laws, 1999, ch. 374, § 4; Laws, 2001, ch. 471, § 1; Laws, 2002, ch. 616 , § 1; Laws, 2006, ch. 474, § 20; Laws, 2008, ch. 452, § 4, eff from and after passage (approved Apr. 8, 2008.)]

§ 91-9-109. [Codes, 1942, § 672-124; Laws, 1966, ch. 372, § 4, eff from and after June 30, 1966.]

§ 91-9-111. [Codes, 1942, § 672-125; Laws, 1966, ch. 372, § 5, eff from and after June 30, 1966.]

§ 91-9-113. [Codes, 1942, § 672-126; Laws, 1966, ch. 372, § 6, eff from and after June 30, 1966.]

§ 91-9-115. [Codes, 1942, § 672-127; Laws, 1966, ch. 372, § 7, eff from and after June 30, 1966.]

§ 91-9-117. [Codes, 1942, § 672-128; Laws, 1966, ch. 372, § 8, eff from and after June 30, 1966.]

§ 91-9-119. [Codes, 1942, § 672-129; Laws, 1966, ch. 372, § 9, eff from and after June 30, 1966.]

Editor's Notes — Former § 91-9-101, which was included in former Article 3 of Chapter 9, provided the short title for Article 3.

Former § 91-9-103, which was included in former Article 3 of Chapter 9, provided definitions for words used in Article 3. Definitions can now be found in § 91-8-103.

Former § 91-9-105, which was included in former Article 3 of Chapter 9, provided that trustees have all powers conferred by Article 3 unless limited in the trust instrument.

Former § 91-9-107, which was included in former Article 3 of Chapter 9, related to trustee powers conferred by Article 3. For present similar provisions, see § 91-8-816.

Former § 91-9-109, which was included in former Article 3 of Chapter 9, prohibited a trustee from transferring his/her office or delegate the administration of the trust to another.

Former § 91-9-111, which was included in former Article 3 of Chapter 9, related to the power of the court to, under certain circumstances, remove restrictions on trustee's power that would otherwise be placed on the trustee by the trust of former Article 3 of Chapter 9.

Former § 91-9-113, which was included in former Article 3 of Chapter 9, related to powers exercisable by joint trustees. For present similar provisions, see § 91-8-703.

Former § 91-9-115, which was included in former Article 3 of Chapter 9, provided protections for third persons dealing with or assisting a trustee. For present similar provisions, see § 91-8-1012.

Former § 91-9-117, which was included in former Article 3 of Chapter 9, related to the applicability of former Article 3.

Former § 91-9-119, which was included in former Article 3 of Chapter 9, provided for uniformity of interpretation of former Article 3. For similar provisions relating to uniformity of application and construction of Chapter 8, Title 91, see § 91-8-1101.

Cross References — References contained in a will or trust incorporating by reference the powers enumerated in former §§ 91-9-101 through 91-9-119 (former Article 3) incorporate by reference the powers contained in § 91-8-816, see § 91-8-816.

ARTICLE 5.

RESIGNATION AND SUCCESSION OF TRUSTEES.

Sec.
91-9-201 through 91-9-213. Repealed.

§§ 91-9-201 through 91-9-213. Repealed.

Repealed by Laws, 2014, ch. 421, § 107, effective from and after July 1, 2014.

§ 91-9-201. [Codes, 1942, § 672-151; Laws, 1966, ch. 373, § 1, eff from and after passage (approved May 6, 1966).]

§ 91-9-203. [Codes, 1942, § 672-152; Laws, 1966, ch. 373, § 2, eff from and after passage (approved May 6, 1966).]

§ 91-9-205. [Codes, 1942, § 672-153; Laws, 1966, ch. 373, § 3, eff from and after passage (approved May 6, 1966).]

§ 91-9-207. [Codes, 1942, § 672-154; Laws, 1966, ch. 373, § 4, eff from and after passage (approved May 6, 1966).]

§ 91-9-209. [Codes, 1942, § 672-155; Laws, 1966, ch. 373, § 5, eff from and after passage (approved May 6, 1966).]

§ 91-9-211. [Codes, 1942, § 672-156; Laws, 1966, ch. 373, § 6, eff from and after passage (approved May 6, 1966).]

§ 91-9-213. [Codes, 1942, § 672-157; Laws, 1966, ch. 373, § 7, eff from and after passage (approved May 6, 1966).]

Editor's Notes — Former § 91-9-201, which was included in former Article 5 of Chapter 9, provided for the applicability of Article 5 and defined trustee.

Former § 91-9-203, which was included in former Article 5 of Chapter 9, related to the resignation of a trustee and appointment of a successor. For present similar provisions, see § 91-8-704 (vacancy in trusteeship and appointment of a successor) and § 91-8-705 (resignation of trustee).

Former § 91-9-205, which was included in former Article 5 of Chapter 9, provided for a trustee accounting and discharge of the trustee.

Former § 91-9-207, which was included in former Article 5 of Chapter 9, related to the title, right and powers of a successor trustee.

Former § 91-9-209, which was included in former Article 5 of Chapter 9, related to beneficiary under disability.

Former § 91-9-211, which was included in former Article 5 of Chapter 9, provided for determining jurisdiction as it relates to trusts. For present provisions relating to jurisdiction and judicial proceedings, see §§ 91-8-201 through 91-8-205.

Former § 91-9-213, which was included in former Article 5 of Chapter 9, provided that the general powers of the courts were not affected by the provisions of former Article 5.

ARTICLE 7.

REMOVAL OF TRUSTEES.

Sec.
91-9-301 through 91-9-305. Repealed.

§§ 91-9-301 through 91-9-305. Repealed.

Repealed by Laws, 2014, ch. 421, § 108, effective from and after July 1, 2014.

§ 91-9-301. [Codes, 1942, § 1273-01; Laws, 1960, ch. 221, § 1, eff from and after passage (approved March 31, 1960).]

§ 91-9-303. [Codes, 1942, § 1273-02; Laws, 1960, ch. 221, § 2, from and after passage (approved March 31, 1960).]

§ 91-9-305. [Codes, 1942, § 1273-03; Laws, 1960, ch. 221, § 3, eff from and after passage (approved March 31, 1960).]

Editor's Notes — Former § 91-9-301, which was included in former Article 7 of Chapter 9, defined certain words and phrases used in the article.

Former § 91-9-303, which was included in former Article 7 of Chapter 9, provided proceedings for the removal of trustees and the appointment of successors. For present similar provisions, see §§ 91-8-704 through 91-8-706.

Former § 91-9-305, which was included in former Article 7 of Chapter 9, related to the powers of the chancery court in removal proceedings. For present provisions relating to judicial proceedings, see §§ 91-8-201 through 91-8-205.

ARTICLE 9.

ADMINISTRATION OF PRIVATE FOUNDATION TRUSTS, CHARITABLE TRUSTS, AND SPLIT-INTEREST TRUSTS.

Sec.
91-9-401. Prohibited acts.
91-9-403. Distribution of amounts to avoid tax liability.
91-9-405. Applicability of Sections 91-9-401 and 91-9-403 when contrary to trust instrument.

Sec.
91-9-407. Amendment of trust instrument to exclude application of Sections 91-9-401 and 91-9-403.
91-9-409. Rights and powers of courts and attorney general.
91-9-411. References to United States Internal Revenue Code.

§ 91-9-401. Prohibited acts.

In the administration of any trust which is a "private foundation," as defined in Section 509 of the United States Internal Revenue Code, a "charitable trust," as defined in Section 4947(a)(1) of the United States Internal Revenue Code, or a "split-interest trust," as defined in Section 4947(a)(2) of the United States Internal Revenue Code, the following acts shall be prohibited:

(a) Engaging in any act of "self-dealing," as defined in Section 4941(d) of the United States Internal Revenue Code, which would give rise to any liability for the tax imposed by Section 4941(a) of the United States Internal Revenue Code;

(b) Retaining any "excess business holdings," as defined in Section 4943(c) of the United States Internal Revenue Code, which would give rise to any liability for the tax imposed by Section 4943(a) of the United States Internal Revenue Code;

(c) Making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of Section 4944 of the United States Internal Revenue Code, so as to give rise to any liability for the tax imposed by Section 4944(a) of the United States Internal Revenue Code; and

(d) Making any "taxable expenditures," as defined in Section 4945(d) of the United States Internal Revenue Code, which would give rise to any liability for the tax imposed by Section 4945(a) of the United States Internal Revenue Code.

This section shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of Section 4947 of the United States Internal Revenue Code.

HISTORY: Codes, 1942, § 672-201; Laws, 1972, ch. 423, § 1, eff from and after passage (approved April 28, 1972).

Editor's Notes — Laws of 1972, ch. 423 § 6, provides as follows:

"SECTION 6. Because the requirements of the Federal Tax Reform Act of 1969 require charitable nonprofit foundations, whether trusts or corporations, to change their governing instruments to comply with said federal act or the state to adopt legislation which complies in lieu of each trust or corporation changing its instrument and because failure to comply by the deadline set in said federal act will result in the loss of tax exemption by such trusts and corporations, the immediate effectiveness of this act is necessary to relieve nonprofit corporations and trusts of the concern about changing their governing instruments and retaining the tax exempt status for such Mississippi organizations; therefore, this act shall take effect and be in force from and after its passage."

Cross References — Similar provisions applicable to private foundations, see § 79-11-51.

Federal Aspects— Sections 509, 4941, 4943, 4944, 4945, and 4947 of the United States Internal Revenue Code, referred to in this section, can be found codified at 26 USCS §§ 509, 4941, 4943 through 4945, and 4947.

RESEARCH REFERENCES

ALR.

Enforceability of contractual right, in which fiduciary has interest, to purchase property of estate or trust. 6 A.L.R.4th 786.

Validity, as for a charitable purpose, of trust for publication or distribution of particular books or writings. 34 A.L.R.4th 419.

Am. Jur.

34 Am. Jur. 2d, Federal Taxation ¶ 8047.

§ 91-9-403. Distribution of amounts to avoid tax liability.

In the administration of any trust which is a "private foundation," as defined in Section 509 of the United States Internal Revenue Code, or which is a "charitable trust," as defined in Section 4947(a)(1) of the United States Internal Revenue Code, there shall be distributed, for the purposes specified in the trust instrument, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by Section 4942(a) of the United States Internal Revenue Code.

HISTORY: Codes, 1942, § 672-202; Laws, 1972, ch. 423, § 2, eff from and after passage (approved April 28, 1972).

Cross References — Similar provisions applicable to private foundations, see § 79-11-53.

Federal Aspects— Sections 509, 4942(a), and 4947(a)(1) of the United States Internal Revenue Code, referred to in this section, can be found codified at 26 USCS §§ 509, 4942(a), and 4947(a)(1).

§ 91-9-405. Applicability of Sections 91-9-401 and 91-9-403 when contrary to trust instrument.

The provisions of Sections 91-9-401 and 91-9-403 shall not apply to any trust to the extent that a court of competent jurisdiction shall determine that such application would be contrary to the terms of the instrument governing such trust and that the same may not properly be changed to conform to such sections. The trustee shall not be held liable to anyone for any payments made under Section 91-9-403 prior to such determination.

HISTORY: Codes, 1942, § 672-203; Laws, 1972, ch. 423, § 3, eff from and after passage (approved April 28, 1972).

Cross References — Similar provisions applicable to private foundations, see § 79-11-55.

§ 91-9-407. Amendment of trust instrument to exclude application of Sections 91-9-401 and 91-9-403.

The trustees of any trust which is a "private foundation" (as defined in Section 509 of the United States Internal Revenue Code), a "charitable trust" (as defined in Section 4947(a)(1) of the United States Internal Revenue Code) or a "split-interest trust" (as defined in Section 4947(a)(2) of the United States Internal Revenue Code) may, without judicial proceedings, amend the governing instrument of such trust expressly to exclude the application of Sections 91-9-401 and 91-9-403, or any portion thereof, by executing a written amendment to such trust and filing a duplicate original of such amendment with the secretary of state of the State of Mississippi, whereupon such section or sections, or any portion thereof, as the case may be, shall not apply to such trust. Neither the trustees nor the trust shall be liable to anyone for any payments made under Section 91-9-403 prior to such amendment.

HISTORY: Codes, 1942, § 672-203; Laws, 1972, ch. 423, § 3, eff from and after passage (approved April 28, 1972).

Cross References — Similar provisions applicable to private foundations, see § 79-11-57.

Federal Aspects— Sections 509 and 4947 of the United States Internal Revenue Code, referred to in this section, can be found codified at 26 USCS §§ 509 and 4947.

§ 91-9-409. Rights and powers of courts and attorney general.

Nothing in Sections 91-9-401 through 91-9-411 shall impair the rights and powers of the courts or the attorney general of this state with respect to any trust.

HISTORY: Codes, 1942, § 672-204; Laws, 1972, ch. 423, § 4, eff from and after passage (approved April 28, 1972).

Cross References — Similar provisions applicable to private foundations, see § 79-11-59.

§ 91-9-411. References to United States Internal Revenue Code.

All references to sections of the United States Internal Revenue Code shall be to such law as it exists as of April 28, 1972.

HISTORY: Codes, 1942, § 672-205; Laws, 1972, ch. 423, § 5, eff from and after passage (approved April 28, 1972).

ARTICLE 11.

FAMILY TRUST PRESERVATION ACT OF 1998 [REPEALED].

Sec.
91-9-501 through 91-9-511. Repealed.

§§ 91-9-501 through 91-9-511. Repealed.

Repealed by Laws, 2020, ch. 406, § 89, eff from and after July 1, 2020.

§ 91-9-501. [Laws, 1998, ch. 460, § 1, eff from and after passage (approved March 23, 1998).]

§ 91-9-503. [Laws, 1998, ch. 460, § 2; Laws, 2014, ch. 513, § 13; Laws, 2016, ch. 396, § 12, eff from and after July 1, 2014.]

§ 91-9-505. [Laws, 1998, ch. 460, § 3; Laws, 2014, ch. 513, § 14; Laws, 2016, ch. 396, § 18, eff from and after July 1, 2014.]

§ 91-9-507. [Laws, 1998, ch. 460, § 4; Laws, 2014, ch. 513, § 15; Laws, 2016, ch. 396, § 14, eff from and after July 1, 2014.]

§ 91-9-509. [Laws, 2016, ch. 396, § 15, eff from and after July 1, 2014.]

§ 91-9-511. [Laws, 1998, ch. 460, § 6, eff from and after passage (approved March 23, 1998).]

Editor's Notes — Former § 91-9-501 defined terms under Article 11.

Former § 91-9-503 provided that beneficiary's interests not subject to transfer nor subject to enforcements of money judgments.

Former § 91-9-505 related to trust monies designated for education or support of beneficiary and restrictions on transfers and enforcements of money judgments.

Former § 91-9-507 made trust monies designated for payments in trustee's discretion; added restrictions and liability on payments to transferees or creditors; and allowed beneficiary's right to compel payments by trustee.

Former § 91-9-509 provided that where settlor is beneficiary of own trust, certain restraints on transfers are invalid and authorized payments for education or support at trustee's discretion, up to the maximum amount accessible by transferees or creditors.

Former § 91-9-511 provided applicability clause for the article.

ARTICLE 13.

UNIFORM PRUDENT INVESTOR ACT.

Sec.	
91-9-601.	Prudent investor rule.
91-9-603.	Standard of care; portfolio strategy; risk and return.
91-9-605.	Diversification.
91-9-607.	Duties at inception of trusteeship.
91-9-609.	Loyalty.
91-9-611.	Impartiality.
91-9-613.	Investment costs.
91-9-615.	Reviewing compliance.
91-9-617.	Delegation of investment and management.
91-9-619.	Language invoking standard of article.
91-9-621.	Application to existing trusts.
91-9-623.	Uniformity of application and construction.
91-9-625.	Short title.
91-9-627.	Severability.

§ 91-9-601. Prudent investor rule.

(a) Except as otherwise provided in subsection (b), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this article.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

HISTORY: Laws, 2006, ch. 474, § 1, eff from and after July 1, 2006.

Cross References — Investment trusts, see § 79-15-1 et seq.
Fiduciary investments, see § 91-13-1 et seq.

§ 91-9-603. Standard of care; portfolio strategy; risk and return.

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(1) General economic conditions;

(2) The possible effect of inflation or deflation;

(3) The expected tax consequences of investment decisions or strategies;

(4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(5) The expected total return from income and the appreciation of capital;

(6) Other resources of the beneficiaries;

(7) Needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this article.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

HISTORY: Laws, 2006, ch. 474, § 2, eff from and after July 1, 2006.

§ 91-9-605. Diversification.

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

HISTORY: Laws, 2006, ch. 474, § 3, eff from and after July 1, 2006.

§ 91-9-607. Duties at inception of trusteeship.

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this article.

HISTORY: Laws, 2006, ch. 474, § 4, eff from and after July 1, 2006.

§ 91-9-609. Loyalty.

A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

HISTORY: Laws, 2006, ch. 474, § 5, eff from and after July 1, 2006.

JUDICIAL DECISIONS

1. Duty of loyalty.

Trustee's withdrawals or "loans" from separate irrevocable trusts constituted a breach of his duty of loyalty as a fiduciary because his withdrawals depleted the trusts and proximately caused injury to the other beneficiaries of the trusts. Moreover, it could not be determined that a beneficiary gave the trustee permission to make withdrawals from one of the trusts before the death of the beneficiary. Cassibry v. Cassibry, 217 So. 3d 698, 2017 Miss. App. LEXIS 40 (Miss. Ct. App. 2017).

§ 91-9-611. Impartiality.

If a trust has two (2) or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

HISTORY: Laws, 2006, ch. 474, § 6, eff from and after July 1, 2006.

§ 91-9-613. Investment costs.

In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

HISTORY: Laws, 2006, ch. 474, § 7, eff from and after July 1, 2006.

§ 91-9-615. Reviewing compliance.

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

HISTORY: Laws, 2006, ch. 474, § 8, eff from and after July 1, 2006.

§ 91-9-617. Delegation of investment and management.

(a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) The investment agent shall comply with the scope and terms of the delegation and shall exercise the delegated function with reasonable care, skill and caution and shall be liable to the trust for failure to do so. An investment agent who represents that he has special investment skills shall exercise those skills.

(c) A trustee who complies with the requirements of subsection (a) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

(e) A cofiduciary may delegate investment and management functions to another cofiduciary if the delegating cofiduciary reasonably believes that the other cofiduciary has greater investment skills than the delegating cofiduciary with respect to those functions. The delegating cofiduciary shall not be responsible for the investment decisions or actions of the other cofiduciary to which the investment functions are delegated if the delegating cofiduciary exercises reasonable care, skill and caution in establishing the scope and specific terms of the delegation and in reviewing periodically the other cofiduciary's actions in order to monitor the cofiduciary's performance and compliance with the scope and specific terms of the delegation.

(f) Investment in a mutual fund is not a delegation of investment function, and neither the mutual fund nor its advisor is an investment agent.

HISTORY: Laws, 2006, ch. 474, § 9, eff from and after July 1, 2006.

§ 91-9-619. Language invoking standard of article.

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this article: "Investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

HISTORY: Laws, 2006, ch. 474, § 10, eff from and after July 1, 2006.

§ 91-9-621. Application to existing trusts.

This article applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this article governs only decisions or actions occurring after that date.

HISTORY: Laws, 2006, ch. 474, § 11, eff from and after July 1, 2006.

§ 91-9-623. Uniformity of application and construction.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among the states enacting it.

HISTORY: Laws, 2006, ch. 474, § 12, eff from and after July 1, 2006.

§ 91-9-625. Short title.

Sections 91-9-601 through 91-9-627 may be cited as the "Mississippi Uniform Prudent Investor Act."

HISTORY: Laws, 2006, ch. 474, § 13, eff from and after July 1, 2006.

§ 91-9-627. Severability.

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

HISTORY: Laws, 2006, ch. 474, § 14, eff from and after July 1, 2006.

ARTICLE 15.

MISSISSIPPI QUALIFIED DISPOSITION IN TRUST ACT.

Sec.
91-9-701. Short title.

Sec.

91-9-703. Definitions.

91-9-705. Qualified affidavit; contents.

91-9-707. Claims or actions against property subject to qualified disposition; claims or actions against trustees.

91-9-709. Transferor's powers and rights.

91-9-711. Avoidance of qualified disposition.

91-9-713. Spendthrift restriction.

91-9-715. Qualified trustees; advisors.

91-9-717. Investment advisors; service.

91-9-719. Failure to meet requirements; qualified trustees.

91-9-721. Revocation.

91-9-723. Application of article.

§ 91-9-701. Short title.

This article shall be known and may be cited as the Mississippi Qualified Disposition in Trust Act.

HISTORY: Laws, 2014, ch. 513, § 1, eff from and after July 1, 2014.

§ 91-9-703. Definitions.

As used in this article, unless the context otherwise requires:

(a) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(b) "Creditor" means, with respect to a transferor, a person who has a claim.

(c) "Debt" means liability on a claim.

(d) "Disposition" means a transfer, conveyance or assignment of property, including a change in the legal ownership of property occurring upon the substitution of one (1) trustee for another or the addition of one or more new trustees. "Disposition" also includes the exercise of a power so as to cause a transfer of property to a trustee or trustees, but shall not include the release or relinquishment of an interest in property that, until the release or relinquishment, was the subject of a qualified disposition.

(e) "Investment advisor" means a person given authority by the terms of a qualified disposition trust to direct, consent to or disapprove a trustee's actual or proposed investment decision.

(f) "Investment decision" means the retention, purchase, sale, exchange, tender, or other transaction affecting the ownership of or rights in investments.

(g) "Person" means an individual, a corporation, an organization, or other legal entity.

(h) "Property" includes real property, personal property, and interests in real or personal property.

(i) "Qualified affidavit" means a sworn affidavit signed by the transferor before making a qualified disposition. In the event of a disposition by a transferor who is a trustee, the affidavit shall be signed by the transferor who made the original disposition to the trustee, or a predecessor trustee, in a form that meets the requirements of subsection (n)(2) and (3) of this section and shall state facts as of the time of the original disposition.

(j) "Qualified disposition" means a disposition by or from a transferor to a qualified trustee or qualified trustees, with or without consideration, by means of a qualified disposition trust, after the transferor executes a qualified affidavit.

(k) "Qualified trustee" means a person who:

(1) In the case of a natural person, is a resident of this state, or, in all other cases, is authorized by the law of this state to act as a trustee and whose activities are subject to supervision by the Mississippi Department of Banking and Consumer Finance, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, or the Office of Thrift Supervision or any successor to them;

(2) Maintains or arranges for custody in this state of some or all of the property that is the subject of the qualified disposition, maintains records for the trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation of required income tax returns for the trust, or otherwise materially participates in the administration of the trust; and

(3) Is not the transferor.

(*l*) "Spouse" or "former spouse" means only persons to whom the transferor was legally married at, or before, the time the qualified disposition is made.

(m) "Transferor" means a person who, directly or indirectly, makes a disposition or causes a disposition to be made in such person's capacity:

(1) As an owner of property;

(2) As a holder of a power of appointment that authorizes the holder to appoint in favor of the holder, the holder's creditors, the holder's estate or the creditors of the holder's estate; or

(3) As a trustee.

(n) "Qualified disposition trust" means a trust instrument appointing a qualified trustee or qualified trustees for the property that is the subject of a disposition, which instrument:

(1) Expressly incorporates the law of this state to govern the validity, construction and administration of the trust;

(2) Is irrevocable; and

(3) Provides that the interest of the transferor or other beneficiary in the trust property or the income from the trust property may not be transferred, assigned, pledged or mortgaged, whether voluntarily or involuntarily, before the qualified trustee or qualified trustees actually distribute the property or income from the property to the beneficiary.

HISTORY: Laws, 2014, ch. 513, § 2; Laws, 2016, ch. 396, § 16, eff from and after July 1, 2014.

§ 91-9-705. Qualified affidavit; contents.

A qualified affidavit shall state that:

(a) The transferor has full right, title, and authority to transfer the assets to the trust;

(b) The transfer of the assets to the trust will not render the transferor insolvent;

(c) The transferor does not intend to defraud a creditor by transferring the assets to the trust;

(d) The transferor does not have any pending or threatened court actions against the transferor, except for those court actions identified by the transferor on an attachment to the affidavit;

(e) The transferor is not involved in any administrative proceedings, except for those administrative proceedings identified on an attachment to the affidavit;

(f) The transferor does not contemplate filing for relief under the provisions of the federal bankruptcy code;

(g) The assets being transferred to the trust were not derived from unlawful activities; and

(h) The transferor is a named insured of a general liability insurance policy and, if applicable, a professional liability insurance policy, with policy limits of at least One Million Dollars ($1,000,000.00) for each respective policy.

HISTORY: Laws, 2014, ch. 513, § 3, eff from and after July 1, 2014.

§ 91-9-707. Claims or actions against property subject to qualified disposition; claims or actions against trustees.

(a) Notwithstanding any law to the contrary, no action of any kind, including, but not limited to, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity for an attachment or other provisional remedy against property that is the subject of a qualified disposition or for the avoidance of a qualified disposition, unless the action is brought pursuant to the provisions of the Uniform Fraudulent Transfer Act, Section 15-3-101 et seq., and unless the qualified disposition was also made with actual intent to defraud the creditor.

(b)(1) Notwithstanding Section 15-3-115, a creditor's claim under subsection (a) shall be extinguished:

(A) If the person is a creditor when the qualified disposition to a qualified disposition trust is made, unless the action is commenced within the later of two (2) years after the qualified disposition is made or six (6) months after the person discovers or reasonably should have discovered the qualified disposition; or

(B) If the person becomes a creditor after the qualified disposition to a qualified disposition trust is made, unless the action is commenced within two (2) years after the qualified disposition is made;

(2) If subsection (b)(1) applies:

(A) A person shall be deemed to have discovered the existence of a qualified disposition to a qualified disposition trust at the time any public record is made of any transfer of property relative to the qualified disposition, including, but not limited to, the conveyance of real property that is recorded in the office of the chancery clerk of the county in which the property is located or the filing of a financing statement under Chapter 9, Title 75, Mississippi Code of 1972, or the equivalent recording or filing of either with the appropriate person or official under the laws of a jurisdiction other than this state; and

(B) No creditor shall bring an action with respect to property that is the subject of a qualified disposition unless that creditor proves by clear and convincing evidence that the settlor's transfer of the property was made with the intent to defraud that specific creditor.

(c) For purposes of this article, a qualified disposition that is made by means of a disposition by a transferor who is a trustee shall be deemed to have been made as of the time, whether before, on, or after July 1, 2014, the property that is the subject of the qualified disposition was originally transferred to the transferor acting in the capacity of trustee, or any predecessor trustee, in a form that meets the requirements of Section 91-9-703(n)(2) and (3).

(d) Notwithstanding any law to the contrary, a creditor, including a creditor whose claim arose before or after a qualified disposition, or any other person shall have only the rights with respect to a qualified disposition as are provided in this section and Section 91-9-711, and neither a creditor nor any other person shall have any claim or cause of action against the trustee, an advisor of a trust that is the subject of a qualified disposition, or against any person involved in the counseling, drafting, preparation, execution, or funding of a trust that is the subject of a qualified disposition. For purposes of this section, counseling, drafting, preparation, execution or funding of a trust that is the subject of a qualified disposition includes the counseling, drafting, preparation, execution and funding of a limited partnership or a limited liability company if interests in the limited partnership or limited liability company are subsequently transferred to the trust that is the subject of a qualified disposition.

(e) Notwithstanding any law to the contrary, no action of any kind, including, but not limited to, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity against a trustee or an advisor of a trust that is the subject of a qualified disposition, or against any person involved in the counseling, drafting, preparation, execution or funding of a trust that is the subject of a qualified disposition, if, as of the date the action is brought, an action by a creditor with respect to the qualified disposition would be barred under this section.

(f) In circumstances where more than one (1) qualified disposition is made by means of the same qualified disposition trust, then:

(1) The making of a subsequent qualified disposition shall be disre-

garded in determining whether a creditor's claim with respect to a prior qualified disposition is extinguished as provided in subsection (b); and

(2) Any distribution to a beneficiary shall be deemed to have been made from the latest qualified disposition.

(g) If, in any action brought against a trustee of a trust that is the result of a qualified disposition, a court takes any action whereby the court declines to apply the law of this state in determining the effect of a spendthrift provision of the trust, the trustee of the trust shall immediately upon the court's action and without the further order of any court, cease in all respects to be trustee of the trust and a successor trustee shall succeed as trustee in accordance with the terms of the trust or, if the trust does not provide for a successor trustee and the trust would otherwise be without a trustee, a court of this state, upon the application of any beneficiary of the trust, shall appoint a successor trustee upon the terms and conditions it determines to be consistent with the purposes of the trust and this article. Upon the trustee's ceasing to be trustee, the trustee shall have no power or authority other than to convey the trust property to the successor trustee named in the trust in accordance with this section.

(h) A trust that is the subject of a qualified disposition shall be subject to this section whether or not the transferor retains any or all of the powers and rights described in Section 91-9-709 or serves as an investment advisor pursuant to Section 91-9-717.

(i)(1) Notwithstanding any provision of subsection (a) or (b) to the contrary, the limitations on actions by creditors in law or equity shall not apply and the creditors' claims shall not be extinguished if the transferor is indebted on account of an agreement, judgment, or order of a court for the payment of one or more of the following:

(A) To any person to whom the transferor is indebted on account of an agreement or order of court for the payment of support or alimony in favor of the transferor's spouse, former spouse or children, or for a division or distribution of property in favor of the transferor's spouse or former spouse, but only to the extent of such debt;

(B) To any person who suffers death, personal injury, or property damage on or before the date of a qualified disposition by a transferor, if the death, personal injury, or property damage is at any time determined to have been caused, in whole or in part, by the tortious act or omission of either the transferor or by another person for whom the transferor is or was vicariously liable, but only to the extent of the claim against the transferor or other person for whom the transferor is or was vicariously liable;

(C) To the State of Mississippi or any political subdivision thereof, including, but not limited to, court-ordered restitution in a criminal matter; or

(D) To any creditor in an amount not to exceed One Million Five Hundred Thousand Dollars ($1,500,000.00) if the transferor failed to maintain a One Million Dollar ($1,000,000.00) umbrella policy as required by subsection (*l*).

(2)(A) A claim provided under this subsection (i) shall be asserted against a trustee only:

(i) Upon a final nonappealable determination of a Mississippi court or a fully domesticated, final nonappealable order of a court of another state that the debt is past due; and

(ii) After the court has determined that the claimant has made reasonable attempts to collect the debt from any other sources of the transferor or that any attempt would be futile.

(B) Nothing in this subsection (i)(2) shall be construed to prohibit the court from making the findings required in subsection (i)(2)(A) in the same proceeding and order.

(j) Subsection (i) shall not apply to any claim for forced heirship, legitime or elective share.

(k) In addition to provisions of subsection (j), to the extent subsection (j) applies to the laws of any foreign country:

(1) Neither a qualified disposition trust nor any disposition made subject to the terms of the qualified disposition trust is subject to the laws of any foreign country, nor is any such qualified disposition trust or the disposition void, voidable, liable to be set aside, or defective in any manner for any reason including, but not limited to:

(A) The law of any foreign country prohibits or does not recognize the concept of a qualified disposition trust; or

(B) The qualified disposition trust or disposition avoids or defeats any right, claim, or interest conferred by the law of a foreign country upon any person by reason of a personal relationship to the settlor or by way of heirship rights or contravenes any rule or law of a foreign country or any foreign country's judicial or administrative order or action intended to recognize, protect, enforce, or give effect to the right, claim, or interest.

(2) Relative to any foreign country or any interest in property arising or originating under the laws of any foreign country:

(A) No form of forced heirship, legitime, forced share or any similar heirship rights or form of transmission or transfer of property from a decedent or from a living person, or any restrictions on transmission or transfer of property from a decedent or a living person is recognized by this state; or

(B) No heirship rights described in subsection (k)(2)(A) conferred under the law of a foreign country shall constitute an obligation or liability, the transfer, conveyance or devise of which, would violate Chapter 3, Title 15, Mississippi Code of 1972; and

(C) Subsection (k)(1) shall apply to all realty or other forms of immovable property physically in this state, as well as to all personal or movable property wherever situated if owned by a qualified disposition trust containing a state jurisdiction provision designating that the law of this state controls the qualified disposition trust;

(3) No judgment or other holding of any judicial body of any foreign country, including, but not limited to, any court, administrative body or

other entity or organization purportedly having the power to make judicial or administrative decisions of any foreign country, shall be recognized or enforced or give rise to any equitable forms of relief, including, but not limited to, estoppel, to the extent the judgment or other holding concerns a qualified disposition trust containing a state jurisdiction provision designating that the law of this state controls the qualified disposition trust or to the extent the judgment or other holding concerns property held by the qualified disposition trust.

(4) Subsection (a) applies in addition to all other provisions of this article.

(*l*) The transferor shall obtain a general liability policy and, if applicable, a professional liability policy, and each policy must have a policy limit of at least One Million Dollars ($1,000,000.00). Policy premiums must be paid by the transferor.

HISTORY: Laws, 2014, ch. 513, § 4; Laws, 2016, ch. 396, § 17, eff from and after July 1, 2014.

§ 91-9-709. Transferor's powers and rights.

A transferor shall have only the powers and rights conferred by the qualified disposition trust. The powers and rights conferred by the qualified disposition trust upon the transferor are personal powers and rights that may not be exercised by a creditor or any other person, except as expressly permitted by the trust. Except as permitted by Sections 91-9-717 and 91-9-721, the transferor shall have no rights or authority with respect to the corpus of the trust or the income from the trust, and any agreement or understanding purporting to grant or permit the retention of any greater rights or authority shall be void.

HISTORY: Laws, 2014, ch. 513, § 5, eff from and after July 1, 2014.

§ 91-9-711. Avoidance of qualified disposition.

(a) A qualified disposition shall be avoided only to the extent necessary to satisfy the transferor's debt to the creditor at whose instance the disposition had been avoided, together with costs, including attorneys' fees, that the court may allow.

(b) In the event any qualified disposition shall be avoided as provided in subsection (a), then:

(1) If the court is satisfied that a qualified trustee has not acted in bad faith in accepting or administering the property that is the subject of the qualified disposition:

(A) The qualified trustee shall have a first and paramount lien against the property that is the subject of the qualified disposition in an amount equal to the entire cost, including attorneys' fees, properly incurred by the qualified trustee in the defense of the action or proceedings to avoid the qualified disposition;

(B) The qualified disposition shall be avoided subject to the proper fees, costs, preexisting rights, claims and interests of the qualified trustee and of any predecessor qualified trustee that has not acted in bad faith; and

(C) For purposes of this subsection (b)(1), it shall be presumed that the qualified trustee did not act in bad faith merely by accepting the property; and

(2) If the court is satisfied that a beneficiary of a trust has not acted in bad faith, the avoidance of the qualified disposition shall be subject to the right of the beneficiary to retain any distribution made upon the exercise of a trust power or discretion vested in the qualified trustee or qualified trustees, which power or discretion was properly exercised prior to the creditor's commencement of an action to avoid the qualified disposition. For purposes of this subsection (b)(2), it shall be presumed that the beneficiary, including a beneficiary who is also a transferor of the trust, did not act in bad faith merely by creating the trust or by accepting a distribution made in accordance with the terms of the trust.

(c) A disposition by a trustee that is not a qualified trustee to a trustee that is a qualified trustee shall not be treated as other than a qualified disposition solely because the trust instrument fails to meet the requirements of Section 91-9-703(n)(1).

(d) In the case of a disposition to more than one (1) trustee, a disposition that is otherwise a qualified disposition shall not be treated as other than a qualified disposition solely because not all of the recipient trustees are qualified trustees.

HISTORY: Laws, 2014, ch. 513, § 6, eff from and after July 1, 2014.

§ 91-9-713. Spendthrift restriction.

A spendthrift provision as described in Section 91-9-703(n)(3) shall be deemed to be a restriction on the transfer of the transferor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of Section 541(c)(2) of the Bankruptcy Code, codified in 11 USCS, Section 541(c)(2), or any successor provision.

HISTORY: Laws, 2014, ch. 513, § 7, eff from and after July 1, 2014.

§ 91-9-715. Qualified trustees; advisors.

(a) For purposes of this article, neither the transferor nor any other natural person who is a nonresident of this state nor an entity that is not authorized by the law of this state to act as a trustee or whose activities are not subject to supervision as provided in Section 91-9-703(k)(1) shall be considered a qualified trustee; however, nothing in this article shall preclude a transferor from appointing one (1) or more advisors, including, but not limited to:

(1) Advisors who have authority under the terms of the trust instrument to remove and appoint qualified trustees or trust advisors;

(2) Advisors who have authority under the terms of the trust instrument to direct, consent to or disapprove distributions from the trust; and

(3) Investment advisors, whether or not the advisors would meet the requirements imposed by Section 91-9-703(k).

(b) For purposes of subsection (a), "advisor" includes a trust "protector" or any other person who, in addition to a qualified trustee, holds one or more trust powers.

HISTORY: Laws, 2014, ch. 513, § 8, eff from and after July 1, 2014.

§ 91-9-717. Investment advisors; service.

A person may serve as an investment advisor notwithstanding that the person is the transferor of the qualified disposition, but the person may not otherwise serve as advisor to a trust that is a qualified disposition trust except with respect to the retention of the veto right permitted by Section 91-9-721(a).

HISTORY: Laws, 2014, ch. 513, § 9, eff from and after July 1, 2014.

§ 91-9-719. Failure to meet requirements; qualified trustees.

If a qualified trustee of a qualified disposition trust ceases to meet the requirements of Section 91-9-703(k)(1), and there remains no trustee that meets the requirements, the qualified trustee shall be deemed to have resigned as of the time of that cessation, and thereupon the successor qualified trustee provided for in the qualified disposition trust shall become a qualified trustee of the qualified disposition trust, or in the absence of any successor qualified trustee provided for in the qualified disposition trust, then a court of this state shall, upon application of any interested party, appoint a successor qualified trustee.

HISTORY: Laws, 2014, ch. 513, § 10, eff from and after July 1, 2014.

§ 91-9-721. Revocation.

A qualified disposition trust shall not be deemed revocable on account of its inclusion of one or more of the following:

(a) A transferor's power to veto a distribution from the trust;

(b) A power of appointment, other than a power to appoint to the transferor, the transferor's creditors, the transferor's estate or the creditors of the transferor's estate, exercisable by will or other written instrument of the transferor effective only upon the transferor's death;

(c) The transferor's potential or actual receipt of income, including rights to the income retained in the trust;

(d) The transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust as those terms are defined in Section 664 of the Internal Revenue Code of 1986, codified in 26 USCS Section 664, and any successor provision;

(e) The transferor's receipt each year of an amount specified in the trust instrument, the amount not to exceed five percent (5%) of the initial value of the trust or its value determined, from time to time, pursuant to the trust;

(f) The transferor's potential or actual receipt or use of principal if the potential or actual receipt or use of principal would be the result of a qualified trustee's or qualified trustees' acting:

(1) In the qualified trustee's or qualified trustees' discretion. For purposes of this section, a qualified trustee is presumed to have discretion with respect to the distribution of principal unless the discretion is expressly denied to the trustee by the terms of the trust;

(2) Pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a power to consume, invade, or appropriate property for the benefit of the transferor, unless the power of the transferor is limited by an ascertainable standard relating to the health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or Section 2514(c)(1) of the Internal Revenue Code of 1986, codified in 26 USCS Section 2041(b)(1)(A) or 26 USCS Section 2514(c)(1), as in effect on July 1, 2014, or as later amended; or

(3) At the direction of an advisor described in Section 91-9-715 who is acting:

(i) In the advisor's discretion; or

(ii) Pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a power to consume, invade, or appropriate property for the benefit of the transferor, unless the power of the transferor is limited by an ascertainable standard relating to the health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or Section 2514(c)(1) of the Internal Revenue Code of 1986, 26 USCS Section 2041(b)(1)(A) or 26 USCS Section 2514(c)(1), as in effect on July 1, 2010, or as later amended;

(g) The transferor's right to remove a trustee or advisor and to appoint a new trustee or advisor; however, the right shall not include the appointment of a person who is a related or subordinate party with respect to the transferor within the meaning of Section 672(c) of the Internal Revenue Code of 1986, 26 USCS Section 672(c), and any successor provision;

(h) The transferor's potential or actual use of real property held under a qualified personal residence trust within the meaning of the term as described in Section 2702(c) of the Internal Revenue Code of 1986, codified in 26 USCS Section 2702(c), and any successor provision;

(i) The transferor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on income of the trust if the potential or actual receipt of income or principal is pursuant to a provision in the qualified disposition trust that expressly permits a distribution to the transferor as reimbursement for the taxes and if the distribution would be the result of a qualified trustee's or qualified trustees' acting:

(1) In the qualified trustee's or qualified trustees' discretion or pursuant to a mandatory direction in the qualified disposition trust; or

(2) At the direction of an advisor described in Section 91-9-717, who is acting in the advisor's discretion;

(j) The ability, whether pursuant to direction in the qualified disposition trust or discretion of a qualified trustee to pay, after the death of the transferor, all or any part of the debts of the transferor outstanding at the time of the transferor's death, the expenses of administering the transferor's estate, or any estate or inheritance tax imposed on or with respect to the transferor's estate; and

(k) A qualified trustee's or qualified trustees' authority to make distributions to pay taxes in lieu of or in addition to the power to make a distribution for taxes pursuant to subsection (c), (f), (i), or (j) by direct payment to the taxing authorities.

HISTORY: Laws, 2014, ch. 513, § 11, eff from and after July 1, 2014.

§ 91-9-723. Application of article.

This article shall apply to qualified dispositions and dispositions by transferors who are trustees made on or after July 1, 2014.

HISTORY: Laws, 2014, ch. 513, § 12, eff from and after July 1, 2014.

CHAPTER 11.

FIDUCIARY SECURITY TRANSFERS

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§ 91-11-1. Citation of chapter.

This chapter may be cited as the Uniform Act for Simplification of Fiduciary Security Transfers.

HISTORY: Codes, 1942, § 5359-41; Laws, 1960, ch. 266, § 11, eff from and after passage (approved May 11, 1960).

Editor's Notes — Attention is called to the fact that the Mississippi Uniform Commercial Code does not repeal Code 1942, §§ 5359-31 through 5359-43, inclusive [now Code 1972, §§ 91-11-1 through 91-11-21, inclusive], it being expressly provided that if there is any inconsistency between these sections and the article of the Uniform Commercial Code relating to investment securities, the provisions of these sections control. See § 75-7–103(b) of the Uniform Commercial Code.

Cross References — Regulation of transfer of investment securities under the Uniform Commercial Code, see § 75-8-101 et seq.

Applicability of Mississippi Rules of Civil Procedure to proceedings which are subject to the provisions of Title 91, see Miss. R. Civ. P. 81.

Comparable Laws from other States — Alabama Code, §§ 8-6-70 through 8-6-80.

Delaware: 12 Del. C. § 4301 et seq.

Georgia Code Annotated, §§ 53-12-320 through 53-12-330.

Indiana: Burns Ind. Code Ann. § 30-2-5-1.

Kansas: K.S.A. § 17-4913 et seq.

Louisiana Revised Statutes Annotated, §§ 9:3831 through 9:3840.

Maryland: Md. ESTATES AND TRUSTS Code Ann. § 15-301 et seq.

Michigan: MCLS § 441.101 et seq.

West Virginia: W. Va. Code § 31-4D-1 et seq.

RESEARCH REFERENCES

ALR.

Rights, duties, and liability of corporation in connection with transfer of stock of infant or incompetent. 3 A.L.R.2d 881.

Rights, duties, and liability of corporation in connection with transfer of stock of decedent. 7 A.L.R.2d 1240.

Am. Jur.

Am. Jur. 2d Desk Book, Doc. No. 129, Jurisdictions adopting Uniform Law for Simplification of Fiduciary Security Transfers.

Practice References.

Bickel and Flannery, Living Trusts: Forms and Practice (Matthew Bender).

Burke, Friel, and Gagliardi, Modern Estate Planning, Second Edition (Matthew Bender).

Christensen, International Estate Planning, Second Edition (Matthew Bender).

Mobley, Robinson and Hedrick, Pritchard on the Law of Wills and Administration of Estates, Seventh Edition (Michie).

Planning for Large Estates (Matthew Bender).

Schoenblum, Estate Planning Forms and Clauses (Matthew Bender).

Wyatt, Trust Administration and Taxation (Matthew Bender).

Estate Planning Package —LexisNexis Folio (LexisNexis).

Murphy's Will Clauses: Annotations and Forms with Tax Effects (Matthew Bender).

§ 91-11-3. Definitions.

In this chapter, unless the context otherwise requires:

(a) "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust, or other instrument of transfer.

(b) "Claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir, or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on his behalf, and includes a claim that the transfer would be in breach of fiduciary duties.

(c) "Corporation" means a private or public corporation, association, or trust issuing a security.

(d) "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian, or nominee.

(e) "Person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(f) "Security" includes any share of stock, bond, debenture, note, or other security issued by a corporation which is registered as to ownership on the books of the corporation.

(g) "Transfer" means a change on the books of a corporation in the registered ownership of a security.

(h) "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.

HISTORY: Codes, 1942, § 5359-31; Laws, 1960, ch. 266, § 1, eff from and after passage (approved May 11, 1960).

§ 91-11-5. Registration in name of fiduciary.

A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship. Thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security.

HISTORY: Codes, 1942, § 5359-32; Laws, 1960, ch. 266, § 2, eff from and after passage (approved May 11, 1960).

§ 91-11-7. Assignment by fiduciary.

Except as otherwise provided in this chapter, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary:

(a) may assume without inquiry that the assignment, even though to the fiduciary himself or to his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

(b) may assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or the assignment, even though the record or document is in its possession.

HISTORY: Codes, 1942, § 5359-33; Laws, 1960, ch. 266, § 3, eff from and after passage (approved May 11, 1960).

RESEARCH REFERENCES

Am. Jur.

22 Am. Jur. Pl & Pr Forms (Rev), Sales and Use Taxes, Form 23 (Complaint, petition, or declaration – For damages resulting from breach of fiduciary duties – Against securities exchange broker – By client).

§ 91-11-9. Evidence of appointment or incumbency.

A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

(a) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty (60) days before the transfer; or

(b) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this paragraph (b) provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

HISTORY: Codes, 1942, § 5359-34; Laws, 1960, ch. 266, § 4, eff from and after passage (approved May 11, 1960).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal statutory reference in (b) by substituting "this paragraph (b)" for "this subsection (b)" both times it appears. The Joint Committee ratified the correction at its August 20, 2021, meeting.

§ 91-11-11. Adverse claims.

(1) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner, and the issue of which the security is a part, provides an address for communications directed to the claimant, and is received before the transfer. Nothing in this chapter relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in subsection (2).

(2) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice, it shall withhold the transfer for thirty days after the mailing and shall then make the transfer unless restrained by a court order.

HISTORY: Codes, 1942, § 5359-35; Laws, 1960, ch. 266, § 5, eff from and after passage (approved May 11, 1960).

§ 91-11-13. Non-liability of corporation and transfer agent.

A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this chapter.

HISTORY: Codes, 1942, § 5359-36; Laws, 1960, ch. 266, § 6, eff from and after passage (approved May 11, 1960).

§ 91-11-15. Non-liability of third persons.

(1) No person who participates in the acquisition, disposition, assignment, or transfer of a security by or to a fiduciary, including a person who guarantees the signature of the fiduciary, is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction

involves such a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary, or that the transaction was otherwise in breach of duty.

(2) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this chapter incurs no liability.

(3) This section does not impose any liability upon the corporation or its transfer agent.

HISTORY: Codes, 1942, § 5359-37; Laws, 1960, ch. 266, § 7, eff from and after passage (approved May 11, 1960).

§ 91-11-17. Territorial application.

(1) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary, or in making a transfer of a security pursuant to an assignment by a fiduciary, are governed by the law of the jurisdiction under whose laws the corporation is organized.

(2) This chapter applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment, or transfer of a security by or to a fiduciary, and of a person who guarantees in this state the signature of a fiduciary in connection with such a transaction.

HISTORY: Codes, 1942, § 5359-38; Laws, 1960, ch. 266, § 8, eff from and after passage (approved May 11, 1960).

§ 91-11-19. Tax obligations.

This chapter does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession, or other taxes imposed by the laws of this state.

HISTORY: Codes, 1942, § 5359-39; Laws, 1960, ch. 266, § 9, eff from and after passage (approved May 11, 1960).

§ 91-11-21. Uniformity of interpretation.

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

HISTORY: Codes, 1942, § 5359-40; Laws, 1960, ch. 266, § 10, eff from and after passage (approved May 11, 1960).

CHAPTER 13.

FIDUCIARY INVESTMENTS

Sec.	
91-13-1.	Investment by fiduciaries of funds held in trust.
91-13-3.	Authority to prudently invest in all property.
91-13-5.	"Legal investment" construed.
91-13-6.	Federally insured accounts and certificates of deposit as legal investments.
91-13-7.	General powers of courts not affected.
91-13-8.	Direct obligations of United States of America to include interests in certain open-end or closed-end management type investment company or investment trust.
91-13-9.	Application of chapter.
91-13-11.	Tennessee Valley Authority bonds and obligations as legal investments.

§ 91-13-1. Investment by fiduciaries of funds held in trust.

All trustees, guardians, and other fiduciaries in this state, unless prohibited by the will, deed, or trust instrument of the testator or other person establishing the trust, agency, or fiduciary relationship, or unless by any such instrument another mode of investment is prescribed, may, in addition to methods of investment now authorized by law, invest all funds held in trust or for investment as provided in this chapter.

HISTORY: Codes, 1942, § 421.5; Laws, 1956, ch. 212, §§ 1-7.

Cross References — Bonds of bank as legal investments; authorized investments by bank, see § 31-25-51.

Student loan revenue bonds as legal investments and securities, see § 37-145-69.

Investment in bonds; bonds as security for deposits, see § 57-10-257.

Purchase of farm credit securities by executors, trustees, administrators and guardians, etc., see § 75-69-5.

Powers of trustees of investment trusts, see § 79-15-9.

Savings accounts as legal investments and as security for bonds, see Savings Associations Law, § 81-12-1 et seq.

Fiduciaries accounts in savings associations, see § 81-12-139.

Savings accounts as legal investments and as security for bonds, see Savings Bank Law, § 81-14-1 et seq.

Fiduciary not to use funds; investment by fiduciary bank in time certificates of deposit, see § 91-7-253.

Other sections derived from same 1942 code section, see §§ 91-13-3, 91-13-5, 91-13-7, 91-13-9.

Federally insured accounts and certificates of deposit as legal investments, see § 91-13-6.

Direct obligations of United States of America to include interests in certain open-end or close-end management type investment company or investment trust, see § 91-13-8.

Tennessee Valley Authority bonds and obligations as legal investments, see § 91-13-11.

Applicability of Mississippi Rules of Civil Procedure to proceedings which are subject to the provisions of Title 91, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

This section does not mandate that an executor invest estate funds; instead, the executor "may" invest estate funds. McNeil v. Hester, 753 So. 2d 1057, 2000 Miss. LEXIS 23 (Miss. 2000).

RESEARCH REFERENCES

Practice References.

Bickel, Living Trusts: Forms and Practice (Matthew Bender).

Burke, Friel, and Gagliardi, Modern Estate Planning, Second Edition (Matthew Bender).

Christensen, International Estate Planning, Second Edition (Matthew Bender).

Mobley, Robinson and Hedrick, Pritchard on the Law of Wills and Administration of Estates, Seventh Edition (Michie).

Planning for Large Estates (Matthew Bender).

Schoenblum, Estate Planning Forms and Clauses (Matthew Bender).

Wyatt, Trust Administration and Taxation (Matthew Bender).

Estate Planning Package —LexisNexis Folio (LexisNexis).

Murphy's Will Clauses: Annotations and Forms with Tax Effects (Matthew Bender).

§ 91-13-3. Authority to prudently invest in all property.

In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property held in fiduciary capacity, the fiduciary shall exercise the judgment and care under the circumstances then prevailing which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

Within the limitations of the foregoing standard, a fiduciary is authorized to acquire and retain every kind of property, real, personal, or mixed, and every kind of investment, specifically including, but not by way of limitation, shares or interests in common trust funds, securities of any open-end or closed-end management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended and, in addition, bonds, preferred stocks, or common stocks listed on a national securities exchange registered with the securities and exchange commission, which men of prudence, discretion, and intelligence acquire or retain for their own account. Within the limitations of the foregoing standard, a fiduciary may retain property properly acquired, without limitation as to time and without regard to its suitability for original purchase.

HISTORY: Codes, 1942, § 421.5; Laws, 1956, ch. 212, §§ 1-7.

Cross References — Bonds issued for the support of the Institute for Technology Development as legal investments, see § 31-29-17.

Housing and slum clearance bonds as legal investment, see § 43-33-39.

Bonds of home owners' loan corporation as legal investments, see § 43-33-201.

FHA insured mortgages as legal investments, see § 43-33-303.

Bonds of flood and damage control districts as legal investments, see § 51-35-337.

Bonds of Business Finance Corporation as legal investments, see § 57-10-257.

Bonds issued under state ports and harbors law as legal investments, see § 59-5-63.

Farm credit securities as legal investments, see § 75-69-5.

Other sections derived from same 1942 code section, see §§ 91-13-1, 91-13-5, 91-13-7, 91-13-9.

Federal Aspects— The Federal Investment Company Act of 1940, referred to in this section, is codified at 15 USCS § 80a-1 et seq.

JUDICIAL DECISIONS

1. In general.

Even though an estate lost money, there was no breach of fiduciary duty on the part of an administratrix under Miss. Code Ann. § 91-13-3 because, other than filing a petition to consolidate certain stocks, she relied on the estate's professionals in making decisions. Moreover, she was not a guarantor of the estate's assets. Longmire v. Harveston (In re Estate of McGee), 982 So. 2d 428, 2007 Miss. App. LEXIS 703 (Miss. Ct. App. 2007), cert. denied, 981 So. 2d 298, 2008 Miss. LEXIS 237 (Miss. 2008).

Although there is no per se duty to place estate funds in an interest-bearing account, the failure to so place estate funds can constitute an imprudent management of estate funds. McNeil v. Hester, 753 So. 2d 1057, 2000 Miss. LEXIS 23 (Miss. 2000).

RESEARCH REFERENCES

ALR.

Measure of trustee's liability for breach of trust in selling investment property, or changing investments, in good faith. 58 A.L.R.2d 674.

Authorization by trust instrument of investment of trust funds in nonlegal investments. 78 A.L.R.2d 7.

Am. Jur.

1 Am. Jur. Proof of Facts 2d, Fiduciary's Breach of Investment Duties, § 12 et seq. (proof of breach of investment duty).

§ 91-13-5. "Legal investment" construed.

Whenever the express terms or limitations set forth in any will, agreement, court order, or other instrument use the terms "legal investment" or "authorized investment" or words of similar import, such words shall be conclusively presumed to mean any investment authorized or permitted by Section 91-13-3.

HISTORY: Codes, 1942, § 421.5; Laws, 1956, ch. 212, §§ 1-7.

Cross References — Bonds issued for the support of the Institute for Technology Development as legal investments, see § 31-29-17.

Investments in county industrial development authority bonds, see § 57-31-27.

Other sections derived from same 1942 code section, see §§ 91-13-1, 91-13-3, 91-13-7, 91-13-9.

§ 91-13-6. Federally insured accounts and certificates of deposit as legal investments.

All trustees, guardians, administrators, executors and other fiduciaries may, without court order, if not prohibited by the instrument, judgment, decree or order establishing the fiduciary relationship, invest or deposit funds held in a fiduciary capacity in time certificates of deposit, savings accounts or other interest-bearing accounts of (a) any state or national bank (including itself, if such fiduciary be a bank) whose main office is located in the state and the deposits of which are insured by the Federal Deposit Insurance Corporation, or (b) any state or federal savings and loan association (including itself, if such fiduciary be a savings and loan association) whose main office is located in the state and the deposits of which are insured by the Federal Savings and Loan Insurance Corporation.

HISTORY: Laws, 1982, ch. 364, § 1, eff from and after July 1, 1982.

§ 91-13-7. General powers of courts not affected.

Nothing contained in this chapter shall be construed to limit the power of a court of competent jurisdiction to permit a fiduciary to take any action authorized, or to restrain a fiduciary from taking any action prohibited by a decree of such court, notwithstanding the permissions or restrictions contained in any written instrument under which such fiduciary is acting.

HISTORY: Codes, 1942, § 421.5; Laws, 1956, ch. 212, §§ 1-7.

Cross References — Other sections derived from same 1942 code section, see §§ 91-13-1, 91-13-3, 91-13-5, 91-13-9.

§ 91-13-8. Direct obligations of United States of America to include interests in certain open-end or closed-end management type investment company or investment trust.

All trustees, guardians, administrators, executors and other fiduciaries, whenever a governing instrument or order directs, requires, authorizes or permits investment in direct obligations of the United States of America, may invest in such obligations either directly or in the form of securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the provisions of 15 U.S.C. Section 80(a)-1 et seq., provided that the portfolio of such investment company or investment trust is limited to direct obligations of the United States of America and to repurchase agreements fully collateralized by direct obligations of the United States of America, and that such investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian. This section shall not be construed to apply to the investment of any public funds; provided, however, that this section shall be construed to apply to the investment of public funds deposited with a bank trustee acting in a fiduciary capacity in connection with the sale and redemption of bonds, notes and other certificates of indebtedness, notwithstanding Section 31-19-5, Mississippi Code of 1972.

HISTORY: Laws, 1989, ch. 572, § 1, eff from and after July 1, 1989.

Federal Aspects— Regulation of investment companies, see 15 USCS § 80a-1 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Section 91-13-8 authorizes the investment of county bond proceeds in a money market mutual fund by a bank trustee, if the money market mutual fund is an open-end or closed-end management type investment company or investment trust registered under the provisions of 15 U.S.C. Section 80(a)-1 et seq. Zeagler, July 26, 2006, A.G. Op. 06-0313.

§ 91-13-9. Application of chapter.

Fiduciaries acting under authority heretofore or hereafter granted shall be subject to the provisions of this chapter.

The powers granted by this chapter to trustees, guardians, and other fiduciaries shall be in addition to the powers existing by virtue of other laws heretofore enacted authorizing investments by fiduciaries.

HISTORY: Codes, 1942, § 421.5; Laws, 1956, ch. 212, §§ 1-7.

Cross References — Other sections derived from same 1942 code section, see §§ 91-13-1, 91-13-3, 91-13-5, 91-13-7.

§ 91-13-11. Tennessee Valley Authority bonds and obligations as legal investments.

All bonds and other obligations issued by the Tennessee Valley Authority under the provisions of the Tennessee Valley Authority Act of 1933, as heretofore or hereafter amended, shall be legal investments for trustees and other fiduciaries, for the public employees' retirement system of Mississippi, and for banks, savings banks, trust companies, building and loan associations, and insurance companies organized under the laws of the State of Mississippi. Such bonds and obligations shall be legal securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and political subdivisions for the purpose of securing the deposit of public funds.

HISTORY: Codes, 1942, § 421.7; Laws, 1962, ch. 179.

Cross References — Investments by board of trustees of public employees retirement system of Mississippi, see § 25-11-121.

State depositories generally, see § 27-105-1 et seq.

Investments by insurance companies generally, see § 83-19-51.

CHAPTER 15.

RELEASE OF POWERS OF APPOINTMENT

Sec.
91-15-1. Citation of chapter.
91-15-3. Definitions.
91-15-5. Right to release.
91-15-7. Manner of effecting release.
91-15-9. Release heretofore made.
91-15-11. Right of release not exclusive.
91-15-13. Delivery of release as notice.
91-15-15. Recordation as notice.
91-15-17. Manner of recording release.
91-15-19. Release not invalid for failure to comply with certain sections.
91-15-21. Controlling effect of chapter.

§ 91-15-1. Citation of chapter.

This chapter may be cited as the "release of power of appointment law."

HISTORY: Codes, 1942, § 671-71; Laws, 1946, ch. 405, § 1.

Cross References — Applicability of Mississippi Rules of Civil Procedure to proceedings which are subject to the provisions of Title 91, see Miss. R. Civ. P. 81.

JUDICIAL DECISIONS

1. In general.

Code 1942, § 672-71 et seq. do not apply to the transfer of an interest in property which is owned absolutely and unqualifiedly by the person undertaking to release the power. Bishop v. United States, 338 F. Supp. 1336, 1970 U.S. Dist. LEXIS 11277 (N.D. Miss. 1970), aff'd, 1972 U.S. App. LEXIS 10892 (5th Cir. Mar. 7, 1972), aff'd, 468 F.2d 950 (5th Cir. Miss. 1972).

RESEARCH REFERENCES

Am. Jur.

62 Am. Jur. 2d, Powers of Appointment and Alienation § 55.

CJS.

72 C.J.S., Powers § 11.

Practice References.

Bickel and Flannery, Living Trusts: Forms and Practice (Matthew Bender).

Burke, Friel, and Gagliardi, Modern Estate Planning, Second Edition (Matthew Bender).

Christensen, International Estate Planning, Second Edition (Matthew Bender).

Mobley, Robinson and Hedrick, Pritchard on the Law of Wills and Administration of Estates, Seventh Edition (Michie).

Planning for Large Estates (Matthew Bender).

Schoenblum, Estate Planning Forms and Clauses (Matthew Bender).

Wyatt, Trust Administration and Taxation (Matthew Bender).

Estate Planning Package —LexisNexis Folio (LexisNexis).

Murphy's Will Clauses: Annotations and Forms with Tax Effects (Matthew Bender).

§ 91-15-3. Definitions.

When used in this chapter, unless the context otherwise requires:

(a) "Power" includes any power to appoint or designate to whom property shall go, any power to invade property, any power to alter, amend, or revoke any instrument under which an estate or trust is held or created or to terminate any right or interest thereunder, and any power remaining where one or more partial releases have heretofore or hereafter been made with respect to a power, whether heretofore or hereafter created or reserved, whether vested, contingent, or conditional, and whether classified in law or known as a power in gross, a power appendant, a power appurtenant, a collateral power, a general, special, or limited power, exclusive or nonexclusive power, or otherwise, and irrespective of when, in what manner, or in whose favor it may be exercised.

(b) "Donee" means any person, whether resident or nonresident of this state, who, either alone or with another, has the right to exercise a power.

(c) "Objects" when used in connection with a power means the person in whose favor the power may be exercised.

(d) "Property" when used in connection with a power means any and all property, whether real or personal, any and all interest in property, and any and all income from property, which is subject to the power, and includes any part of the property, any part of the interest in property, and any part of the income from property.

(e) "Release" means renunciation, relinquishment, surrender, refusal to accept, extinguishment, and any other form of release.

HISTORY: Codes, 1942, § 672-72; Laws, 1946, ch. 405, § 2.

RESEARCH REFERENCES

Am. Jur.

62 Am. Jur. 2d, Powers of Appointment and Alienation §§ 1, 2, 9, 33.

CJS.

72 C.J.S., Powers § 2 et seq.

§ 91-15-5. Right to release.

Unless the instrument creating the power specifically provides to the contrary, the donee of a power, whether now existing or hereafter created, may:

(a) At any time completely release his power.

(b) At any time or times release his power: (one) as to any property which is subject thereto; (two) as to any one or more of the objects thereof; or (three) so as to limit in any other respect the extent to which it may be exercised.

HISTORY: Codes, 1942, § 672-73; Laws, 1946, ch. 405, § 3.

RESEARCH REFERENCES

Am. Jur.
62 Am. Jur. 2d, Powers of Appointment and Alienation §§ 1-3, 6, 7, 90, 91.

CJS.
72 C.J.S., Powers § 6, 7.

§ 91-15-7. Manner of effecting release.

A release of a power, whether partial or complete, shall be valid and effective with or without a consideration when the donee executes an instrument evidencing an intent to make the release, signed and acknowledged in the manner prescribed for the execution of deeds, and delivers the instrument or causes it to be delivered, either:

(a) To an adult person who may take any of the property which is subject to the power in the event of its non-exercise, or to one in whose favor it may be exercised after such partial release; or

(b) To any trustee or any co-trustee of the property which is subject to the power; or

(c) By filing the same for recordation in the chancery clerk's office in the county and judicial district thereof in which any of the property is located, or in which either the donee or the trustee in control of the property resides, or in which the trustee has its principal office, or in which the instrument creating the power is probated or recorded.

HISTORY: Codes, 1942, § 672-74; Laws, 1946, ch. 405, § 4.

RESEARCH REFERENCES

Am. Jur.
62 Am. Jur. 2d, Powers of Appointment and Alienation §§ 52, 57, 90, 91.

§ 91-15-9. Release heretofore made.

A release of a power executed prior to April 10, 1946, shall have the same effect as if this chapter had been in effect at the time the release was executed and delivered.

HISTORY: Codes, 1942, § 672-75; Laws, 1946, ch. 405, § 5.

§ 91-15-11. Right of release not exclusive.

The rights and means provided in this chapter for the release of a power are not exclusive, but are in addition to all other rights and means of a donee to release a power in whole or in part.

HISTORY: Codes, 1942, § 672-76; Laws, 1946, ch. 405, § 6.

RESEARCH REFERENCES

Am. Jur.
62 Am. Jur. 2d, Powers of Appointment and Alienation §§ 52, 57.

§ 91-15-13. Delivery of release as notice.

Any fiduciary or other person, association, or corporation having the possession or control of any property subject to a power of appointment shall be deemed to have notice of a release of the power when the original or a copy of the release is delivered to such fiduciary or other person, association, or corporation.

HISTORY: Codes, 1942, § 672-77; Laws, 1946, ch. 405, § 7.

§ 91-15-15. Recordation as notice.

Any purchaser or mortgagee of real property subject to a power of appointment, who is without actual notice, shall be deemed to have notice of a release of the power when the original or duplicate original is filed for record in the chancery clerk's office in the county and judicial district thereof in which the particular real property so purchased or mortgaged is located, and when the deed, will, or other instrument creating the power, or a duly attested copy thereof, is recorded in the same office, and an appropriate notation is entered on the margin of the will or deed book where the instrument creating the power is recorded, referring to the deed book and page where the release is recorded.

HISTORY: Codes, 1942, § 672-78; Laws, 1946, ch. 405, § 8.

Cross References — Recording of instruments generally, see § 89-5-1 et seq.
Method of recording and indexing instruments, see §§ 89-5-25, 89-5-33.

§ 91-15-17. Manner of recording release.

Clerks of chancery courts are authorized and directed to record releases of powers of appointment in the books provided for the recordation of deeds, to index the same in the current and general indexes, the name of the donee being entered on the grantor index, and to charge therefor at the rate applicable to deeds.

HISTORY: Codes, 1942, § 672-79; Laws, 1946, ch. 405, § 9.

Cross References — Fees for recording instruments, see § 25-7-9.

§ 91-15-19. Release not invalid for failure to comply with certain sections.

No release shall be invalid or ineffective because of failure to comply with either Section 91-15-13 or Section 91-15-15.

HISTORY: Codes, 1942, § 672-80; Laws, 1946, ch. 405, § 10.

§ 91-15-21. Controlling effect of chapter.

In so far as the provisions of this chapter may conflict with other laws or parts thereof, the provisions of this chapter shall control.

HISTORY: Codes, 1942, § 672-81; Laws, 1946, ch. 405, § 11.

CHAPTER 17.

MISSISSIPPI PRINCIPAL AND INCOME ACT OF 2013

Sec.

91-17- through 91-17-31. Repealed.
Article 1. Definitions and Fiduciary Duties. 91-17-101
Article 2. Decedent's Estate or Terminating Income Interest. 91-17-201
Article 3. Apportionment at Beginning and End of Income Interest. .. 91-17-301
Article 4. Allocation of Receipts During Administration of Trust. ... 91-17-401
Article 5. Allocation of Disbursements During Administration of Trust. 91-17-501
Article 6. Miscellaneous Provisions. 91-17-601

§§ 91-17-1 through 91-17-31. Repealed.

Repealed by Laws, 2012, ch. 351, § 2, effective from and after January 1, 2013.

§ 91-17-1 [Codes, 1942, § 672-186; Laws, 1966, ch. 371, § 16, eff from and after January 1, 1967; Repealed by Laws of 2012, ch. 351, § 2, effective from and after January 1, 2013.]

§ 91-17-3 [Codes, 1942, § 672-171; Laws, 1966, ch. 371, § 1, eff from and after January 1, 1967; Repealed by Laws of 2012, ch. 351, § 2, effective from and after January 1, 2013.]

§ 91-17-5 [Codes, 1942, § 672-172; Laws, 1966, ch. 371, § 2, eff from and after January 1, 1967.]

§ 91-17-7 [Codes, 1942, § 672-173; Laws, 1966, ch. 371, § 3, eff from and after January 1, 1967.]

§ 91-17-9 [Codes, 1942, § 672-174; Laws, 1966, ch. 371, § 4, eff from and after January 1, 1967.]

§ 91-17-11 [Codes, 1942, § 672-175; Laws, 1966, ch. 371, § 5, eff from and after January 1, 1967.]

§ 91-17-13 [Codes, 1942, § 672-176; Laws, 1966, ch. 371, § 6, eff from and after January 1, 1967.]

§ 91-17-15 [Codes, 1942, § 672-177; Laws, 1966, ch. 371, § 7, eff from and after January 1, 1967.]

§ 91-17-17 [Codes, 1942, § 672-178; Laws, 1966, ch. 371, § 8, eff from and after January 1, 1967.]

§ 91-17-19 [[Codes, 1942, § 672-179; Laws, 1966, ch. 371, § 9, eff from and after January 1, 1967.]

§ 91-17-21 [Codes, 1942, § 672-180; Laws, 1966, ch. 371, § 10, eff from and after January 1, 1967.]

§ 91-17-23 [Codes, 1942, § 672-181; Laws, 1966, ch. 371, § 11, eff from and after January 1, 1967.]

§ 91-17-25 [Codes, 1942, § 672-183; Laws, 1966, ch. 371, § 12, eff from and after January 1, 1967.]

§ 91-17-27 [Codes, 1942, § 672-183; Laws, 1966, ch. 371, § 13, eff from and after January 1, 1967.]

§ 91-17-29 [Codes, 1942, § 672-184; Laws, 1966, ch. 371, § 14, eff from and after January 1, 1967.]

§ 91-17-31 [Codes, 1942, § 672-185; Laws, 1966, ch. 371, § 15, eff from and after January 1, 1967.]

Editor's Notes — Former § 91-17-1 provided the short title for the chapter.

Former § 91-17-3 provided definitions of terms used in the chapter.

Former § 91-17-5 related to the duties of trustees as to receipts and expenditures.

Former § 91-17-7 defined income and principal.

Former § 91-17-9 related to an income beneficiary's right to income and its apportionment.

Former § 91-17-11 related to income earned during administration of decedent's estate.

Former § 91-17-13 related to corporate distributions.

Former § 91-17-15 related to bond premium and discount.

Former § 91-17-17 related to business and farming operations.

Former § 91-17-19 related to the disposition of receipts from taking natural resources from land.

Former § 91-17-21 related to receipts from taking the timber from the land.

Former § 91-17-23 related to other property subject to depletion.

Former § 91-17-25 related to underproductive property.

Former § 91-17-27 related to charges against income and principal.

Former § 91-17-29 related to the application of chapter.

Former § 91-17-31 related to uniformity of interpretation.

ARTICLE 1.

DEFINITIONS AND FIDUCIARY DUTIES.

Sec.
91-17-101. Short title.
91-17-102. Definitions.
91-17-103. Fiduciary duties; general principles.
91-17-104. Trustee's power to adjust.
91-17-105. Judicial control of discretionary power.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-101. Short title.

This chapter may be cited as the Mississippi Principal and Income Act of 2013.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-102. Definitions.

In this chapter:

(1) "Accounting period" means a calendar year unless another twelve-month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve-month period that begins when an income interest begins or ends when an income interest ends.

(2) "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

(3) "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

(4) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in Article 4.

(5) "Income beneficiary" means a person to whom net income of a trust is or may be payable.

(6) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

(7) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(8) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this chapter to or from income during the period.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(10) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

(11) "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

(12) "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

(13) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

JUDICIAL DECISIONS

ANALYSIS

I. Under current law.

1.-5. [Reserved for future use.]

II. Under former § 91-17-3.

6. In general.

I. Under current law.

1.-5. [Reserved for future use.]

II. Under former § 91-17-3.

6. In general.

Uniform Principal and Income Law controls over common law, when seeking definitions of terms in trust instruments. Hynson v. Jeffries, 697 So. 2d 792, 1997 Miss. App. LEXIS 544 (Miss. Ct. App. 1997).

§ 91-17-103. Fiduciary duties; general principles.

(a) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of Articles 2 and 3, a fiduciary:

(1) Shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter;

(2) May administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter;

(3) Shall administer a trust or estate in accordance with this chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(4) Shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under Section 91-17-104(a) or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

JUDICIAL DECISIONS

ANALYSIS

I. Under current law.

1.-5. [Reserved for future use.]

II. Under former § 91-17-5.

6. In general.

I. Under current law.

1.-5. [Reserved for future use.]

II. Under former § 91-17-5.

6. In general.

Uniform Principal and Income Law applied to marital deduction trust that contained producing oil and gas properties, and royalties from those minerals were to be divided between principal and income in accordance with statute's provisions. Hynson v. Jeffries, 697 So. 2d 792, 1997 Miss. App. LEXIS 544 (Miss. Ct. App. 1997).

§ 91-17-104. Trustee's power to adjust.

(a) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in Section 91-17-103(a), that the trustee is unable to comply with Section 91-17-103(b).

(b) In deciding whether and to what extent to exercise the power conferred by subsection (a), a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

(1) The nature, purpose, and expected duration of the trust;

(2) The intent of the settlor;

(3) The identity and circumstances of the beneficiaries;

(4) The needs for liquidity, regularity of income, and preservation and appreciation of capital;

(5) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

(6) The net amount allocated to income under the other sections of this chapter and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(7) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(8) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

(9) The anticipated tax consequences of an adjustment.

(c) A trustee may not make an adjustment:

(1) That diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(2) That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(3) That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(4) From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(5) If possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(6) If possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(7) If the trustee is a beneficiary of the trust; or

(8) If the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

(d) If subsection (c)(5), (6), (7), or (8) applies to a trustee and there is more than one (1) trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(e) A trustee may release the entire power conferred by subsection (a) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (c)(1) through (6) or (c)(8) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (c). The release may be permanent or for a specified period, including a period measured by the life of an individual.

(f) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection (a).

(g)(1) For purposes of this section, and subject to subsection (c) of this section, from time to time a trustee may make a safe-harbor adjustment to increase net trust accounting income up to and including an amount equal to six percent (6%) of the trust's value as defined in subsection (g)(2). If a trustee determines to make this safe-harbor adjustment, the propriety of this adjustment shall be conclusively presumed. Nothing in this subsection (g) prohibits any other type of adjustment authorized under any provision of this section.

(2) A trust's value under subsection (g)(1) shall be calculated as follows:

(i) For trusts in existence for three (3) years or more, the value shall be the average fair market value of the trust assets over the past three (3) years;

(ii) For trusts in existence for at least two (2) years but less than three (3) years, the value shall be the average fair market value of the trust assets over the past two (2) years; and

(iii) For trusts in existence less than two (2) years, the value shall be the fair market value of the trust assets on December 31 of the preceding year.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-105. Judicial control of discretionary power.

(a) The court may not order a fiduciary to change a decision to exercise or not to exercise a discretionary power conferred by this chapter unless it determines that the decision was an abuse of the fiduciary's discretion. A fiduciary's decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power.

(b) The decisions to which subsection (a) applies include:

(1) A decision under Section 91-17-104(a) as to whether and to what extent an amount should be transferred from principal to income or from income to principal.

(2) A decision regarding the factors that are relevant to the trust and its beneficiaries, the extent to which the factors are relevant, and the weight, if any, to be given to those factors, in deciding whether and to what extent to exercise the discretionary power conferred by Section 91-17-104(a).

(c) If the court determines that a fiduciary has abused the fiduciary's discretion, the court may place the income and remainder beneficiaries in the positions they would have occupied if the discretion had not been abused, according to the following rules:

(1) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or in a distribution that is too small, the court shall order the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position.

(2) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary which is too large, the court shall place the beneficiaries, the trust, or both, in whole or in part, in their appropriate positions by ordering the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or ordering that beneficiary to return some or all of the distribution to the trust.

(3) To the extent that the court is unable, after applying paragraphs (1) and (2), to place the beneficiaries, the trust, or both, in the positions they would have occupied if the discretion had not been abused, the court may order the fiduciary to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust or both.

(d) Upon petition by the fiduciary, the court having jurisdiction over a trust or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this chapter will result in an abuse of the fiduciary's discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

ARTICLE 2.

DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST.

Sec.
91-17-201. Determination and distribution of net income.
91-17-202. Distribution to residuary and remainder beneficiaries.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-201. Determination and distribution of net income.

After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in Articles 3

through 5 which apply to trustees and the rules in paragraph (5). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in Articles 3 through 5 which apply to trustees and by:

(A) Including in net income all income from property used to discharge liabilities;

(B) Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

(C) Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding-up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under paragraph (2) or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright and no interest or other amount is provided for by the will or by the terms of the trust, and if the pecuniary amount is not distributed to the beneficiary within one (1) year of the date of death of the testator or the date the income interest ends, then the fiduciary shall distribute to the beneficiary interest on any amount that remains undistributed after the one-year anniversary until the pecuniary amount is distributed in full. The interest rate shall be the IRS midterm applicable federal rate in effect on the date the interest begins to accrue.

(4) A fiduciary shall distribute the net income remaining after distributions required by paragraph (3) in the manner described in Section 91-17-202 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in paragraph (1) because of a payment described in Section 91-17-501 or 91-17-502 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and

principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-202. Distribution to residuary and remainder beneficiaries.

(a) Each beneficiary described in Section 91-17-201(4) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one (1) distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) In determining a beneficiary's share of net income, the following rules apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(2) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(3) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(c) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(d) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

ARTICLE 3.

APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST.

Sec.

91-17-301. When right to income begins and ends.
91-17-302. Apportionment of receipts and disbursements when decedent dies or income interest begins.
91-17-303. Apportionment when income interest ends.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-301. When right to income begins and ends.

(a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset becomes subject to a trust:

(1) On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(2) On the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(3) On the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (d), even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-302. Apportionment of receipts and disbursements when decedent dies or income interest begins.

(a) A trustee shall allocate an income receipt or disbursement other than one to which Section 91-17-201(1) applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which Section 91-17-401 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-303. Apportionment when income interest ends.

(a) In this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(b) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent (5%) of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

(c) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes —
This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

ARTICLE 4.

ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST.

Part 1. Receipts from Entities 91-17-401
Part 2. Receipts not Normally Apportioned 91-17-404
Part 3. Receipts Normally Apportioned 91-17-408

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

PART 1.

RECEIPTS FROM ENTITIES

Sec.
91-17-401. Character of receipt.
91-17-402. Distribution from trust or estate.
91-17-403. Business and other activities conducted by trustee.

§ 91-17-401. Character of receipt.

(a) In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which Section 91-17-402 applies, a business or activity to which Section 91-17-403 applies, or an asset-backed security to which Section 91-17-415 applies.

(b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(c) A trustee shall allocate the following receipts from an entity to principal:

(1) Property other than money;

(2) Money received in one (1) distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(3) Money received in total or partial liquidation of the entity; and

(4) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) Money is received in partial liquidation:

(1) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(2) If the total amount of money and property received in a distribution or series of related distributions is greater than twenty percent (20%) of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(e) Money is not received in partial liquidation, nor may it be taken into account under subsection (d)(2), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(f) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-402. Distribution from trust or estate.

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, Section 91-17-401 or 91-17-415 applies to a receipt from the trust.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-403. Business and other activities conducted by trustee.

(a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(b) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Activities for which a trustee may maintain separate accounting records include:

(1) Retail, manufacturing, service, and other traditional business activities;

(2) Farming;

(3) Raising and selling livestock and other animals;

(4) Management of rental properties;

(5) Extraction of minerals and other natural resources;

(6) Timber operations; and

(7) Activities to which Section 91-17-414 applies.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

PART 2.

RECEIPTS NOT NORMALLY APPORTIONED

Sec.

91-17-404. Principal receipts.
91-17-405. Rental property.
91-17-406. Obligation to pay money.
91-17-407. Insurance policies and similar contracts.

§ 91-17-404. Principal receipts.

A trustee shall allocate to principal:

(1) To the extent not allocated to income under this chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

(2) Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this article;

(3) Amounts recovered from third parties to reimburse the trust because of disbursements described in Section 91-17-502(a) (7) or for other reasons to the extent not based on the loss of income;

(4) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

(5) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

(6) Other receipts as provided in Part 3 of this article.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-405. Rental property.

To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-406. Obligation to pay money.

(a) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

(b) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one (1) year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one (1) year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

(c) This section does not apply to an obligation to which Section 91-17-409, 91-17-410, 91-17-411, 91-17-412, 91-17-414, or 91-17-415 applies.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-407. Insurance policies and similar contracts.

(a) Except as otherwise provided in subsection (b), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to Section 91-17-403, loss of profits from a business.

(c) This section does not apply to a contract to which Section 91-17-409 applies.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

PART 3.

RECEIPTS NORMALLY APPORTIONED

Sec.

91-17-408. Insubstantial allocations not required.
91-17-409. Deferred compensation, annuities, and similar payments.
91-17-410. Liquidating asset.
91-17-411. Minerals, water, and other natural resources.
91-17-412. Timber.
91-17-413. Property not productive of income.
91-17-414. Derivative and options.
91-17-415. Asset-backed securities.

§ 91-17-408. Insubstantial allocations not required.

If a trustee determines that an allocation between principal and income required by Section 91-17-409, 91-17-410, 91-17-411, 91-17-412, or 91-17-415 is insubstantial, the trustee may allocate the entire amount to principal unless one (1) of the circumstances described in Section 91-17-104(c) applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in Section 91-17-104(d) and may be released for the reasons and in the manner described in Section 91-17-104(e). An allocation is presumed to be insubstantial if:

(1) The amount of the allocation would increase or decrease net income

in an accounting period, as determined before the allocation, by less than ten percent (10%); or

(2) The value of the asset producing the receipt for which the allocation would be made is less than ten percent (10%) of the total value of the trust's assets at the beginning of the accounting period.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-409. Deferred compensation, annuities, and similar payments.

(a) In this section:

(1) "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. For purposes of subsections (d), (e), (f), and (g), the term also includes any payment from any separate fund, regardless of the reason for the payment.

(2) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that a payment is characterized as interest, or a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent (10%) of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(d) Except as otherwise provided in subsection (e), subsections (f) and (g) apply, and subsections (b) and (c) do not apply, in determining the allocation of a payment made from a separate fund to:

(1) A trust to which an election to qualify for a marital deduction under Section 2056(b)(7) of the Internal Revenue Code of 1986, as amended, has been made; or

(2) A trust that qualifies for the marital deduction under Section 2056(b)(5) of the Internal Revenue Code of 1986, as amended.

(e) Subsections (d), (f), and (g) do not apply if and to the extent that the series of payments would, without the application of subsection (d), qualify for the marital deduction under Section 2056(b)(7)(C) of the Internal Revenue Code of 1986, as amended.

(f) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this chapter. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(g) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal four percent (4%) of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under Section 7520 of the Internal Revenue Code of 1986, as amended, for the month preceding the accounting period for which the computation is made.

(h) This section does not apply to a payment to which Section 91-17-410 applies.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-410. Liquidating asset.

(a) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one (1) year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to Section 91-17-409, resources subject to Section 91-17-411, timber subject to Section 91-17-412, an activity subject to Section 91-17-414, an asset subject to Section 91-17-415, or any asset for which the trustee establishes a reserve for depreciation under Section 91-17-503.

(b) A trustee shall allocate to income ten percent (10%) of the receipts from a liquidating asset and the balance to principal.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-411. Minerals, water, and other natural resources.

(a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.

(2) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, ninety percent (90%) must be allocated to principal and the balance to income.

(4) If an amount is received from a working interest or any other interest not provided for in paragraph (1), (2), or (3), ninety percent (90%) of the net amount received must be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, ninety percent (90%) of the amount must be allocated to principal and the balance to income.

(c) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water, or other natural resources on January 1, 2013, the trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the trustee before January 1, 2013. If the trust acquires an interest in minerals, water, or other natural resources after January 1, 2013, the trustee shall allocate receipts from the interest as provided in this chapter.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

JUDICIAL DECISIONS

ANALYSIS

I. Under current law.

1.-5. [Reserved for future use.]

II. Under former § 91-17-9.

6. In general.

I. Under current law.

1.-5. [Reserved for future use.]

II. Under former § 91-17-9.

6. In general.

Annuitants vested with a remainder interest in testator's estate upon the death of the life tenant are not restricted only to that interest in royalties derived from oil leases to which the life tenant was entitled, but their interests in such royalties are governed by those terms of the testator's will dealing with the annuitants themselves. D'Evereaux Hall Orphan Asylum v. Green, 226 So. 2d 725, 1969 Miss. LEXIS 1311 (Miss. 1969).

A life tenant who executes oil leases subsequent to the death of the grantor of the life estate is entitled only to the interest derived from any investment of the royalty gained from such lease. D'Evereaux Hall Orphan Asylum v. Green, 226 So. 2d 725, 1969 Miss. LEXIS 1311 (Miss. 1969).

§ 91-17-412. Timber.

(a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts first to principal, based upon the volume of the timber at the time of transfer to the trust or decedent's estate. The balance shall be allocated eighty percent (80%) to income and the balance to principal.

(b) In determining net receipts to be allocated pursuant to subsection (a), a trustee shall deduct, including, but not limited to, the following expenses related to the sale of timber and related products from gross receipts:

(1) Management expenses;
(2) Legal and accounting expenses and fees;
(3) Sales commissions;
(4) Reforestation expenses; and
(5) Any necessary timber stand improvement expense that is recognized and accepted as good forest management practice at the time of sale.

(c) This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(d) If a trust owns an interest in timberland on January 1, 2013, the trustee may allocate net receipts from the sale of timber and related products as provided in this chapter or in the manner used by the trustee before January 1, 2013. If the trust acquires an interest in timberland after January 1, 2013, the trustee shall allocate net receipts from the sale of timber and related products as provided in this chapter.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013; Laws, 2020, ch. 343, § 5, eff from and after July 1, 2020.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

Amendment Notes — The 2020 amendment rewrote (a), substituting "first to principal, based upon the volume of the timber at the time of transfer to the trust or decedent's estate" for former (1) through (4), and adding the last sentence; and in (b), substituted “including, but not limited to, the following expenses related to the sale of timber and related products from gross receipts” for “and transfer to principal a reasonable amount for depletion,” and added (1) through (5).

§ 91-17-413. Property not productive of income.

(a) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under Section 91-17-104 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by Section 91-17-104(a). The trustee may decide which action or combination of actions to take.

(b) In cases not governed by subsection (a), proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-414. Derivative and options.

(a) In this section, “derivative” means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee does not account under Section 91-17-403 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(c) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-415. Asset-backed securities.

(a) In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which Section 91-17-401 or 91-17-409 applies.

(b) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(c) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one (1) accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one (1) accounting period, the trustee shall allocate ten percent (10%) of the payment to income and the balance to principal.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes —
This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

ARTICLE 5.

ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST.

Sec.

91-17-501. Disbursements from income.
91-17-502. Disbursements from principal.
91-17-503. Transfers from income to principal for depreciation.
91-17-504. Transfers from income to reimburse principal.
91-17-505. Income taxes.
91-17-506. Adjustments between principal and income because of taxes.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-501. Disbursements from income.

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which Section 91-17-201(2)(B) or (C) applies:

(1) One-half (1/2) of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(2) One-half (1/2) of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(3) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

(4) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

With regard to subsections (1) and (2) of this section, a trustee may allocate more or less if income or principal is insufficient to satisfy this allocation during the year.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013; Laws, 2020, ch. 343, § 6, eff from and after July 1, 2020.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

Amendment Notes — The 2020 amendment added the last paragraph.

§ 91-17-502. Disbursements from principal.

(a) A trustee shall make the following disbursements from principal:

(1) The remaining one-half (½) of the disbursements described in Section 91-17-501(1) and (2);

(2) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;

(3) Payments on the principal of a trust debt;

(4) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(5) Premiums paid on a policy of insurance not described in Section 91-17-501(4) of which the trust is the owner and beneficiary;

(6) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and

(7) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities,

penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common-law claims by third parties, and defending claims based on environmental matters.

(b) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-503. Transfers from income to principal for depreciation.

(a) In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one (1) year.

(b) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(1) Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(2) During the administration of a decedent's estate; or

(3) Under this section if the trustee is accounting under Section 91-17-403 for the business or activity in which the asset is used.

(c) An amount transferred to principal need not be held as a separate fund.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-504. Transfers from income to reimburse principal.

(a) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(b) Principal disbursements to which subsection (a) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(1) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(2) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(3) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

(4) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(5) Disbursements described in Section 91-17-502(a)(7).

(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (a).

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-505. Income taxes.

(a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid:

(1) From income to the extent that receipts from the entity are allocated only to income;

(2) From principal to the extent that receipts from the entity are allocated only to principal;

(3) Proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(4) From principal to the extent that the tax exceeds the total receipts from the entity.

(d) After applying subsections (a) through (c), the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-506. Adjustments between principal and income because of taxes.

A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

(1) Elections and decisions, that the fiduciary makes from time to time regarding tax matters;

(2) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(3) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

ARTICLE 6.

MISCELLANEOUS PROVISIONS.

Sec.
91-17-601. Uniformity of application and construction.
91-17-602. Severability clause.
91-17-603. Application of chapter to existing trusts and estates.
91-17-604. Transitional matter.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-601. Uniformity of application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-602. Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-603. Application of chapter to existing trusts and estates.

This chapter applies to every trust or decedent's estate existing on January 1, 2013, except as otherwise expressly provided in the will or terms of the trust or in this chapter.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

§ 91-17-604. Transitional matter.

Section 91-17-409 applies to a trust described in Section 91-17-409(d) on and after the following dates:

(1) If the trust is not funded as of January 1, 2013, the date of the decedent's death.

(2) If the trust is initially funded in the calendar year beginning January 1, 2013, the date of the decedent's death.

(3) If the trust is not described in paragraph (1) or (2), January 1, 2013.

HISTORY: Laws, 2012, ch. 351, § 1, eff from and after Jan. 1, 2013.

Editor's Notes — This chapter was enacted by Laws of 2012, ch. 351, § 1, effective from and after January 1, 2013, to replace §§ 91-17-1 through 91-17-31, which were repealed by § 2 of the same act, effective from and after January 1, 2013.

CHAPTER 19.

GIFTS TO MINORS [REPEALED]

Sec.
91-19-1 through 91-19-19. Repealed.

§§ 91-19-1 through 91-19-19. Repealed.

Repealed by Laws, 1994, ch. 416, § 26, eff from and after January 1, 1995.

§ 91-19-1. [Codes, 1942, § 672-110; Laws, 1958, ch. 248, § 10]

§ 91-19-3. [Codes, 1942, § 672-109; Laws, 1958, ch. 248, § 9]

§ 91-19-5. [Codes, 1942, § 672-101; Laws, 1958, ch. 248, § 1; Laws, 1971, ch. 505, § 1]

§ 91-19-7. [Codes, 1942, § 672-102; Laws, 1958, ch. 248, § 2; Laws, 1971, ch. 505, § 2]

§ 91-19-9. [Codes, 1942, § 672-103; Laws, 1958, ch. 248, § 3; Laws, 1971, ch. 505, § 3]

§ 91-19-11. [Codes, 1942, § 672-104; Laws, 1958, ch. 248, § 4; Laws, 1971, ch. 505, § 4]

§ 91-19-13. [Codes, 1942, § 672-105; Laws, 1958, ch. 248, § 5]

§ 91-19-15. [Codes, 1942, § 672-106; Laws, 1958, ch. 248, § 6; Laws, 1971, ch. 505, § 5]

§ 91-19-17. [Codes, 1942, § 672-107; Laws, 1958, ch. 248, § 7; Laws, 1971, ch. 505, § 6]

§ 91-19-19. [Codes, 1942, § 672-108; Laws, 1958, ch. 248, § 8; Laws, 1960, ch. 217 § 9]

Editor's Notes — Former § 91-19-1 was entitled: Short title.

Former § 91-19-3 was entitled: Construction of chapter.

Former § 91-19-5 was entitled: Definitions.

Former § 91-19-7 was entitled: Manner of making gift.

Former § 91-19-9 was entitled: Effect of gift.

Former § 91-19-11 was entitled: Duties and powers of custodian.

Former § 91-19-13 was entitled: Custodian's expenses, compensation, bond and liabilities.

Former § 91-19-15 was entitled: Exemption of third persons from liability.

Former § 91-19-17 was entitled: Resignation, death or removal of custodian; bond; appointment of successor custodian.

Former § 91-19-19 was entitled: Accounting by custodian.

Laws, 1994, ch. 416, § 26, provides as follows:

"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the 'Mississippi Uniform Gifts to Minors Law,' which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

CHAPTER 20.

TRANSFERS TO MINORS

Sec.

91-20-1. Short title.

91-20-3. Definitions.

91-20-5. Applicability of chapter; jurisdiction.

91-20-7. Nomination of custodian.

91-20-9. Transfer by irrevocable gift or exercise of appointment power in favor of custodian.

91-20-11. Transfer to custodian by personal representative or trustee as authorized by will or trust; designation of custodian by personal representative or trustee.

91-20-13. Transfer by personal representative, trustee, or conservator to another adult or trust company as custodian without authorization by will or trust; prerequisites.

91-20-15. Transfer to custodian by one holding property of or owing debt to minor; designation of custodian.

91-20-17. Written receipt from custodian; effect.

91-20-19. Creation and transfer of custodial property.

91-20-21. One custodian for one minor.

91-20-23. Factors not affecting validity of transfer; powers and duties of custodian unalterable.

91-20-25. Powers and duties of custodian; standard of care; records.

91-20-27. Custodian's exercise of powers and authority over custodial property.

91-20-29. Delivery of property or money to minor; expenditure for benefit of minor; conditions; court order.

91-20-31. Reimbursement of custodian for expenses; compensation of custodian; bond unnecessary.

91-20-33. Good faith reliance on capacity of purported custodian.

91-20-35. Assertion of claim against custodial property; personal liability of custodian or minor.

91-20-37. Declination to serve or resignation as custodian; nomination of substitute custodian; designation of successor custodian; transfer of property.

91-20-39. Petition for accounting or determination of responsibility for claims; accounting upon removal of custodian.

91-20-41. Time for transfer of custodial property to minor or minor's estate.

91-20-43. Applicability of chapter to certain transfers.

91-20-45. Validation of transfers predating chapter; application of chapter to prior transfers.

91-20-47. Construction of chapter.

91-20-49. Severability of provisions of chapter.

§ 91-20-1. Short title.

This chapter may be cited as the "Mississippi Uniform Transfers to Minors Act."

HISTORY: Laws, 1994, ch. 416, § 1, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:
"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the 'Mississippi

Uniform Gifts to Minors Law,' which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

Comparable Laws from other States — Alabama: Code of Ala. §§ 35-5A-1 through 35-5A-24.

Alaska: Alaska Stat. §§ 13.46.010 through 13.46.999.
Arizona: A.R.S. §§ 14-7651 through 14-7671.
Arkansas: A.C.A. §§ 9-26-201 through 9-26-227.
California: California Prob. Code §§ 3900 through 3925.
Colorado: C.R.S. §§ 11-50-101 through 11-50-126.
Connecticut: Conn. Gen. Stat. § 45a-557 et seq.
Delaware: 12 Del. C. §§ 4501 through 4523.
District of Columbia: D.C. Code §§ 21-301 through 21-324.
Florida: Fla. Stat. §§ 710.101 through 710.126.
Georgia: O.C.G.A. §§ 4-5-110 through 44-5-134.
Hawaii H.R.S. §§ 553A-1 through 553A-24.
Illinois: 760 I.L.C.S. 20/1 through 20/24.
Idaho: Idaho Code §§ 68-801 through 68.825.
Indiana: Burns Ind. Code §§ 30-2-8.5-1.
Iowa: Iowa Code §§ 565B.1 through 565B.25.
Kansas: K.S.A. §§ 38-1701 through 38-1726.
Kentucky: K.R.S. §§ 385.012 through 385.242.
Louisiana: La. R.S. §§ 9:751 through 9:773.
Maine: 33 M.R.S. §§ 1651 through 1674.
Maryland: Md. Estates and Trusts Code Ann. §§ 13-301 through 13-324.
Massachusetts: ALM GL ch. 201A, §§ 1 through 24.
Michigan: M.C.L.S. §§ 554.521 through 554.552.
Minnesota: Minn. Stat. §§ 527.21 through 527.44.
Montana: Mont. Code Anno. §§ 72-26-501 through 72-26-803.
Nebraska: R.R.S. Neb. §§ 43-2701 through 43-2724.
Nevada: Nev. Rev. Stat. Ann. §§ 167.010 through 167.110.
New Hampshire: R.S.A. §§ 463-A:1 through 463-A:26.
New Jersey: N.J. Stat. §§ 46:38A-1 through 46:38A-57.
New Mexico: N.M. Stat. Ann. § 46-7-11 et seq.
New York: NY CLS EPTL §§ 7-6.1 through 7-6.26.
North Carolina: N.C. Gen. Stat. §§ 33A-1 through 33A-24.
North Dakota: N.D. Cent. Code §§ 47-24.1-01 through 47-24.1-22.
Ohio: O.R.C. Ann. §§ 5814.01 through 5814.09.
Oklahoma: 58 Okl. St. §§ 1201 through 1225.
Oregon: O.R.S. §§ 126.805 through 126.886.
Pennsylvania: 20 Pa.C.S. §§ 5301 through 5321.
Rhode Island: R.I. Gen. Laws §§ 18-7-1 through 18-7-26.
South Dakota S.D. Codified Laws §§ 55-10A-1 through 55-10A-26.
Tennessee: Tenn. Code Ann. §§ 35-7-201 through 35-7-226.
Texas Property Code, §§ 141.001 through 141.025.
Utah: Utah Code Ann. §§ 75-5A-101 through 75-5A-123.
Vermont: 14 V.S.A. § 3211 et seq.
Virgin Islands: 15 V.I.C. §§ 1251a through 1251x.
Virginia: Va. Code Ann. §§ 64.2-1900 through 64.2-1922.
Washington: Rev. Code Wash. §§ 11.114.010 through 11.114.904.
West Virginia: W. Va. Code 36-7-1 through 36-7-24.

Wisconsin: Wis. Stat. §§ 54.854 through 54.898.
Wyoming: Wyo. Stat. §§ 34-13-114 through 34-13-137.

RESEARCH REFERENCES

Practice References.

Bicke and Flanneryl, Living Trusts: Forms and Practice (Matthew Bender).

Burke, Friel, and Gagliardi, Modern Estate Planning, Second Edition (Matthew Bender).

Christensen, International Estate Planning, Second Edition (Matthew Bender).

Mobley, Robinson and Hedrick, Pritchard on the Law of Wills and Administration of Estates, Seventh Edition (Michie).

Planning for Large Estates (Matthew Bender).

Schoenblum, Estate Planning Forms and Clauses (Matthew Bender).

Wyatt, Trust Administration and Taxation (Matthew Bender).

Estate Planning Package —LexisNexis Folio (LexisNexis).

Murphy's Will Clauses: Annotations and Forms with Tax Effects (Matthew Bender).

§ 91-20-3. Definitions.

In this chapter:

(a) "Adult" means an individual who has attained the age of twenty-one (21) years.

(b) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

(c) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(d) "Conservator" means a person appointed or qualified by a court to act as general, limited or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(e) "Court" means the chancery court of the county in which the parties reside.

(f) "Custodial property" means (i) any interest in property transferred to a custodian under this chapter and (ii) the income from and proceeds of that interest in property.

(g) "Custodian" means a person so designated under § 91-20-19 or a successor or substitute custodian designated under § 91-20-37.

(h) "Financial institution" means a bank, trust company, savings institution or credit union, chartered and supervised under state or federal law.

(i) "Legal representative" means an individual's personal representative or conservator.

(j) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle or aunt, whether of the whole or half blood or by adoption.

(k) "Minor" means an individual who has not attained the age of twenty-one (21) years.

(*l*) "Person" means an individual, corporation, organization or other legal entity.

(m) "Personal representative" means an executor, administrator, successor personal representative or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(n) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession subject to the legislative authority of the United States.

(o) "Transfer" means a transaction that creates custodial property under Section 91-20-19.

(p) "Transferor" means a person who makes a transfer under this chapter.

(q) "Trust company" means a financial institution, corporation or other legal entity authorized to exercise general trust powers.

HISTORY: Laws, 1994, ch. 416, § 2, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:

"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the "Mississippi Uniform Gifts to Minors Law," which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

Cross References — Another definition of "minor," see § 1-3-27.

Savings banks as qualified institutions within meaning of that term as used in Uniform Gifts to Minors Law, see § 81-14-385.

RESEARCH REFERENCES

ALR.

Wills: what constitutes "bank," "checking," or "savings" account, within meaning of bequest. 31 A.L.R.4th 688.

Am. Jur.

38 Am. Jur. 2d, Gifts §§ 1 et seq., 6, 7.

§ 91-20-5. Applicability of chapter; jurisdiction.

(1) This chapter applies to a transfer that refers to this chapter in the designation under Section 91-20-19(1) by which the transfer is made if at the time of the transfer, the transferor, the minor or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this chapter despite a subsequent change in residence of a transferor, the minor or the custodian or the removal of custodial property from this state.

(2) A person designated as custodian under this chapter is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(3) A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act or a

substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the transferor, the minor or the custodian is a resident of the designated state or the custodial property is located in the designated state.

HISTORY: Laws, 1994, ch. 416, § 3, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:
"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the "Mississippi Uniform Gifts to Minors Law," which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Guardian and Ward § 189.

§ 91-20-7. Nomination of custodian.

(1) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: "As custodian for ________ (name of minor) under the Mississippi Uniform Transfers to Minors Act." The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer or other obligor of the contractual rights.

(2) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under Section 91-20-19(1).

(3) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under Section 91-20-19. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to Section 91-20-19.

HISTORY: Laws, 1994, ch. 416, § 4, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:

"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the "Mississippi Uniform Gifts to Minors Law," which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Guardian and Ward § 190.

§ 91-20-9. Transfer by irrevocable gift or exercise of appointment power in favor of custodian.

A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to Section 91-20-19.

HISTORY: Laws, 1994, ch. 416, § 5, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:

"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the "Mississippi Uniform Gifts to Minors Law," which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Guardian and Ward § 190.

§ 91-20-11. Transfer to custodian by personal representative or trustee as authorized by will or trust; designation of custodian by personal representative or trustee.

(1) A personal representative or trustee may make an irrevocable transfer pursuant to Section 91-20-19 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(2) If the testator or settlor has nominated a custodian under Section 91-20-7 to receive the custodial property, the transfer must be made to that person.

(3) If the testator or settlor has not nominated a custodian under Section 91-20-7, or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under Section 91-20-19(1).

HISTORY: Laws, 1994, ch. 416, § 6, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:
"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the "Mississippi Uniform Gifts to Minors Law," which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Guardian and Ward § 190.

§ 91-20-13. Transfer by personal representative, trustee, or conservator to another adult or trust company as custodian without authorization by will or trust; prerequisites.

(1) Subject to subsection (3), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to Section 91-20-19, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(2) Subject to subsection (3), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to Section 91-20-19.

(3) A transfer under subsection (1) or (2) may be made only if (a) the personal representative, trustee or conservator considers the transfer to be in the best interest of the minor, (b) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement or other governing instrument, and (c) the transfer is authorized by the court if it exceeds Ten Thousand Dollars ($10,000.00) in value.

HISTORY: Laws, 1994, ch. 416, § 7, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:
"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the "Mississippi Uniform Gifts to Minors Law," which regulate the manner of making certain gifts to

minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Guardian and Ward § 190.

§ 91-20-15. Transfer to custodian by one holding property of or owing debt to minor; designation of custodian.

(1) Subject to subsections (2) and (3), a person not subject to Section 91-20-11 or 91-20-13 who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to Section 91-20-19.

(2) If a person having the right to do so under Section 91-20-7 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(3) If no custodian has been nominated under Section 91-20-7, or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds Ten Thousand Dollars ($10,000.00) in value.

HISTORY: Laws, 1994, ch. 416, § 8, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:

"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the "Mississippi Uniform Gifts to Minors Law," which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Guardian and Ward § 190.
9 Am. Jur. Legal Forms 2d (Rev), Gifts § 130:84 et seq. (gifts to minors).

§ 91-20-17. Written receipt from custodian; effect.

A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this chapter.

HISTORY: Laws, 1994, ch. 416, § 9, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:
"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the "Mississippi Uniform Gifts to Minors Law," which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Guardian and Ward § 190.

§ 91-20-19. Creation and transfer of custodial property.

(1) Custodial property is created and a transfer is made whenever:

(a) An uncertificated security or a certificated security in registered form is either:

(i) Registered in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "as custodian for ________ (name of minor) under the Mississippi Uniform Transfers to Minors Act"; or

(ii) Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (2);

(b) Money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "as custodian for ________ (name of minor) under the Mississippi Uniform Transfers to Minors Act";

(c) The ownership of a life or endowment insurance policy or annuity contract is either:

(i) Registered with the issuer in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "as custodian for ________ (name of minor) under the Mississippi Uniform Transfers to Minors Act"; or

(ii) Assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for ________ (name of minor) under the Mississippi Uniform Transfers to Minors Act";

(d) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer or other obligor that the right is transferred to the transferor, an adult other than the transferor or a trust company, whose name in the notification is followed in substance by the words: "as custodian for ________ (name of minor) under the Mississippi Uniform Transfers to Minors Act";

(e) An interest in real property is recorded in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "as custodian for ________ (name of minor) under the Mississippi Uniform Transfers to Minors Act";

(f) A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(i) Issued in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "as custodian for ________ (name of minor) under the Mississippi Uniform Transfers to Minors Act"; or

(ii) Delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: "as custodian for ________ (name of minor) under the Mississippi Uniform Transfers to Minors Act"; or

(g) An interest in any property not described in paragraphs (a) through (f) of this subsection (1) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (2) of this section.

(2) An instrument in the following form satisfies the requirements of paragraph (a)(ii) and (g) of subsection (2) of this section:

"TRANSFER UNDER THE MISSISSIPPI UNIFORM
TRANSFERS TO MINORS ACT

I, ________ (name of transferor or name and representative capacity if a fiduciary) hereby transfer to ________ (name of custodian), as custodian for ________ (name of minor) under the Mississippi Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated: ________________

____

(Signature)

________________ (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Mississippi Uniform Transfers to Minors Act.

Dated: ________________

(Signature of Custodian)"

(3) A transferor shall place the custodian in control of the custodial property as soon as practicable.

HISTORY: Laws, 1994, ch. 416, § 10, eff from and after January 1, 1995.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected errors in internal statutory references in (1)(g) by substituting "paragraphs (a) through (f) of this subsection (1)" for "paragraphs (1) through (6)" and "subsection (2) of this section" for "paragraph (b) of this subsection (1)." The Joint Committee ratified the correction at its August 20, 2021, meeting.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:

"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the "Mississippi Uniform Gifts to Minors Law," which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

Cross References — Delivery of ward's property to guardian, see § 93-13-31 et seq.

JUDICIAL DECISIONS

1. Effects of transfer.

Cross-defendant refinancing bank was not entitled to equitable subrogation to step into the original lender's shoes for priority over four cross-defendant judgment creditors because the property was in the debtor/borrower's infant daughter's name until the day of closing and if the bank had inquired of liens under the debtor's name, the judgment creditors' liens would have been found; the fact that the property was titled in the minor daughter's name under the Mississippi Uniform Transfers to Minors Act would have been a "red flag" because a transfer of real property made under Miss. Code Ann. § 91-20-19 was irrevocable, and under Miss. Code Ann. § 91-20-23(2), such custodial property was indefeasibly vested in the minor with the custodian being required to act as a prudent person in dealing with the property under Miss. Code Ann. § 91-20-25, such that the custodial property could not be returned by the custodian indiscriminately. Shavers v. JPMorgan Chase Bank, N.A. (In re Shavers), 418 B.R. 589, 2009 Bankr. LEXIS 3411 (Bankr. S.D. Miss. 2009).

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. 2d, Gifts § 63 et seq.

39 Am. Jur. 2d, Guardian and Ward § 190.

CJS.

38A C.J.S., Gifts § 47.

§ 91-20-21. One custodian for one minor.

A transfer may be made only for one (1) minor, and only one (1) person may be the custodian. All custodial property held under this chapter by the same custodian for the benefit of the same minor constitutes a single custodianship.

HISTORY: Laws, 1994, ch. 416, § 11, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:
"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the "Mississippi Uniform Gifts to Minors Law," which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Guardian and Ward § 190.

§ 91-20-23. Factors not affecting validity of transfer; powers and duties of custodian unalterable.

(1) The validity of a transfer made in a manner prescribed in this chapter is not affected by:

(a) Failure of the transferor to comply with Section 91-20-19(3) concerning possession and control;

(b) Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under Section 91-20-19(1); or

(c) Death or incapacity of a person nominated under Section 91-20-7 or designated under Section 91-20-19 as custodian or the disclaimer of the office by that person.

(2) A transfer made pursuant to Section 91-20-19 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties and authority provided in this chapter, and neither the minor nor the minor's legal representative has any right, power, duty or authority with respect to the custodial property except as provided in this chapter.

(3) By making a transfer, the transferor incorporates in the disposition all the provisions of this chapter and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in this chapter.

HISTORY: Laws, 1994, ch. 416, § 12, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:
"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-

13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the "Mississippi Uniform Gifts to Minors Law," which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

JUDICIAL DECISIONS

1. Duties of custodian.

Cross-defendant refinancing bank was not entitled to equitable subrogation to step into the original lender's shoes for priority over four cross-defendant judgment creditors because the property was in the debtor/borrower's infant daughter's name until the day of closing and if the bank had inquired of liens under the debtor's name, the judgment creditors' liens would have been found; the fact that the property was titled in the minor daughter's name under the Mississippi Uniform Transfers to Minors Act would have been a "red flag" because a transfer of real property made under Miss. Code Ann. § 91-20-19 was irrevocable, and under Miss. Code Ann. § 91-20-23(2), such custodial property was indefeasibly vested in the minor with the custodian being required to act as a prudent person in dealing with the property under Miss. Code Ann. § 91-20-25, such that the custodial property could not be returned by the custodian indiscriminately. Shavers v. JPMorgan Chase Bank, N.A. (In re Shavers), 418 B.R. 589, 2009 Bankr. LEXIS 3411 (Bankr. S.D. Miss. 2009).

RESEARCH REFERENCES

Am. Jur.

39 Am. Jur. 2d, Guardian and Ward § 190.

§ 91-20-25. Powers and duties of custodian; standard of care; records.

(1) A custodian shall:

(a) Take control of custodial property;

(b) Register or record title to custodial property if appropriate; and

(c) Collect, hold, manage, invest and reinvest custodial property.

(2) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(3) A custodian may invest in or pay premiums on life insurance or endowment policies on (a) the life of the minor only if the minor or the minor's estate is the sole beneficiary, or (b) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's

estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(4) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: "as a custodian for ________________ (name of minor) under the Mississippi Uniform Transfers to Minors Act."

(5) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of fourteen (14) years.

HISTORY: Laws, 1994, ch. 416, § 13, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:

"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the ”Mississippi Uniform Gifts to Minors Law,“ which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

JUDICIAL DECISIONS

1. Duties of eustodian.

Cross-defendant refinancing bank was not entitled to equitable subrogation to step into the original lender's shoes for priority over four cross-defendant judgment creditors because the property was in the debtor/borrower's infant daughter's name until the day of closing and if the bank had inquired of liens under the debtor's name, the judgment creditors' liens would have been found; the fact that the property was titled in the minor daughter's name under the Mississippi Uniform Transfers to Minors Act would have been a "red flag" because a transfer of real property made under Miss. Code Ann. § 91-20-19 was irrevocable, and under Miss. Code Ann. § 91-20-23(2), such custodial property was indefeasibly vested in the minor with the custodian being required to act as a prudent person in dealing with the property under Miss. Code Ann. § 91-20-25, such that the custodial property could not be returned by the custodian indiscriminately. Shavers v. JPMorgan Chase Bank, N.A. (In re Shavers), 418 B.R. 589, 2009 Bankr. LEXIS 3411 (Bankr. S.D. Miss. 2009).

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Guardian and Ward
§ 191.

§ 91-20-27. Custodian's exercise of powers and authority over custodial property.

(1) A custodian, acting in a custodial capacity, has all the rights, powers and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers and authority in that capacity only.

(2) This section does not relieve a custodian from liability for breach of Section 91-20-25.

HISTORY: Laws, 1994, ch. 416, § 14, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:

"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the "Mississippi Uniform Gifts to Minors Law," which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Guardian and Ward
§ 191.

§ 91-20-29. Delivery of property or money to minor; expenditure for benefit of minor; conditions; court order.

(1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to (a) the duty or ability of the custodian personally or of any other person to support the minor, or (b) any other income or property of the minor which may be applicable or available for that purpose.

(2) On petition of an interested person or the minor if the minor has attained the age of fourteen (14) years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(3) A delivery, payment or expenditure under this section is in addition to,

not in substitution for, and does not affect any obligation of a person to support the minor.

HISTORY: Laws, 1994, ch. 416, § 15, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:

"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the "Mississippi Uniform Gifts to Minors Law," which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

JUDICIAL DECISIONS

1. College expenses.

A minor may reach the assets of an account in her name through the custodian of the account; and either the minor or the custodian may withdraw funds for college expenses. Saliba v. Saliba, 753 So. 2d 1095, 2000 Miss. LEXIS 35 (Miss. 2000).

RESEARCH REFERENCES

Am. Jur.

39 Am. Jur. 2d, Guardian and Ward § 191.

§ 91-20-31. Reimbursement of custodian for expenses; compensation of custodian; bond unnecessary.

(1) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(2) Except for one who is a transferor under Section 91-20-9, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(3) Except as provided in Section 91-20-37(6), a custodian need not give a bond.

HISTORY: Laws, 1994, ch. 416, § 16, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:

"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the "Mississippi Uniform Gifts to Minors Law," which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Guardian and Ward § 191.

§ 91-20-33. Good faith reliance on capacity of purported custodian.

A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

(a) The validity of the purported custodian's designation;

(b) The propriety of, or the authority under this chapter for, any act of the purported custodian;

(c) The validity or propriety under this chapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(d) The propriety of the application of any property of the minor delivered to the purported custodian.

HISTORY: Laws, 1994, ch. 416, § 17, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:
"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the "Mississippi Uniform Gifts to Minors Law," which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

RESEARCH REFERENCES

Am. Jur.
39 Am. Jur. 2d, Guardian and Ward § 191.

§ 91-20-35. Assertion of claim against custodial property; personal liability of custodian or minor.

(1) A claim based on (a) a contract entered into by a custodian acting in a custodial capacity, (b) an obligation arising from the ownership or control of custodial property, or (c) a tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

(2) A custodian is not personally liable:

(a) On a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(b) For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(3) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

HISTORY: Laws, 1994, ch. 416, § 18, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:

"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the "Mississippi Uniform Gifts to Minors Law," which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

RESEARCH REFERENCES

Am. Jur.

39 Am. Jur. 2d, Guardian and Ward § 191.

§ 91-20-37. Declination to serve or resignation as custodian; nomination of substitute custodian; designation of successor custodian; transfer of property.

(1) A person nominated under Section 91-20-7 or designated under Section 91-20-19 as custodian may decline to serve by delivering a valid disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing and eligible to serve was nominated under Section 91-20-7, the person who made the nomination may nominate a substitute custodian under Section 91-20-7; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under Section 91-20-19(1). The custodian so designated has the rights of a successor custodian.

(2) A custodian at any time may designate a trust company or an adult other than a transferor under Section 91-20-9 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the

designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated or is removed.

(3) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of fourteen (14) years and to the successor custodian and by delivering the custodial property to the successor custodian.

(4) If a custodian is ineligible, dies or becomes incapacitated without having effectively designated a successor and the minor has attained the age of fourteen (14) years, the minor may designate as successor custodian, in the manner prescribed in subsection (2), an adult member of the minor's family, a conservator of the minor or a trust company. If the minor has not attained the age of fourteen (14) years or fails to act within sixty (60) days after the ineligibility, death or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(5) A custodian who declines to serve under subsection (1) or resigns under subsection (3) or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor if the minor has attained the age of fourteen (14) years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under § 91-20-9 or to require the custodian to give appropriate bond.

HISTORY: Laws, 1994, ch. 416, § 19, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:

"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the "Mississippi Uniform Gifts to Minors Law," which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

RESEARCH REFERENCES

Am. Jur.

39 Am. Jur. 2d, Guardian and Ward § 191.

§ 91-20-39. Petition for accounting or determination of responsibility for claims; accounting upon removal of custodian.

(1) A minor who has attained the age of fourteen (14) years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor or a transferor's legal representative may petition the court (a) for an accounting by the custodian or the custodian's legal representative, or (b) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under Section 91-20-35 to which the minor or the minor's legal representative was a party.

(2) A successor custodian may petition the court for an accounting by the predecessor custodian.

(3) The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under Section 91-20-37(6), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

HISTORY: Laws, 1994, ch. 416, § 20, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:

"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the "Mississippi Uniform Gifts to Minors Law," which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

Cross References — Jurisdiction of chancery court in general, see § 9-5-81.

Duties of chancery clerk in regard to guardianship, see § 9-5-137.

Production of vouchers in guardianship proceedings, see § 93-13-73.

§ 91-20-41. Time for transfer of custodial property to minor or minor's estate.

The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(a) The minor's attainment of twenty-one (21) years of age with respect to custodial property transferred under Section 91-20-9 or 91-20-11;

(b) The minor's attainment of eighteen (18) years of age with respect to custodial property transferred under Section 91-20-13 or 91-20-15; or

(c) The minor's death.

HISTORY: Laws, 1994, ch. 416, § 21, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:
"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the ”Mississippi Uniform Gifts to Minors Law,“ which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

§ 91-20-43. Applicability of chapter to certain transfers.

This chapter applies to a transfer within the scope of Section 91-20-5 made after its effective date if:

(a) The transfer purports to have been made under the Mississippi Uniform Gifts to Minors Law, Sections 91-19-1 through 91-19-19; or

(b) The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of this chapter is necessary to validate the transfer.

HISTORY: Laws, 1994, ch. 416, § 22, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:
"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the ”Mississippi Uniform Gifts to Minors Law,“ which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

§ 91-20-45. Validation of transfers predating chapter; application of chapter to prior transfers.

(1) Any transfer of custodial property as now defined in this chapter made before January 1, 1995, is validated notwithstanding that there was no specific authority in the Mississippi Uniform Gifts to Minors Act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) This chapter applies to all transfers made before January 1, 1995, in a manner and form prescribed in the Mississippi Uniform Gifts to Minors Law except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on January 1, 1995.

HISTORY: Laws, 1994, ch. 416, § 23, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:

"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the "Mississippi Uniform Gifts to Minors Law," which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

§ 91-20-47. Construction of chapter.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

HISTORY: Laws, 1994, ch. 416, § 24, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:
"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the "Mississippi Uniform Gifts to Minors Law," which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

§ 91-20-49. Severability of provisions of chapter.

If any provisions of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end provisions of this chapter are severable.

HISTORY: Laws, 1994, ch. 416, § 25, eff from and after January 1, 1995.

Editor's Notes — Laws of 1994, ch. 416, § 26, provides as follows:
"SECTION 26. Sections 91-19-1, 91-19-3, 91-19-5, 91-19-7, 91-19-9, 91-19-11, 91-19-13, 91-19-15, 91-19-17 and 91-19-19, Mississippi Code of 1972, entitled the "Mississippi Uniform Gifts to Minors Law," which regulate the manner of making certain gifts to minors, are repealed. To the extent that this act, by virtue of Section 23(2), does not apply to transfers made in a manner prescribed in the Mississippi Uniform Gifts to Minors Law or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of Sections 91-19-1 through 91-19-19 does not affect those transfers or those powers, duties and immunities."

CHAPTER 21.

UNIFORM TRANSFER-ON-DEATH SECURITY REGISTRATION ACT

Sec.	
91-21-1.	Short title.
91-21-3.	Definitions.
91-21-5.	Registration in beneficiary form; sole or joint tenancy ownership.
91-21-7.	Registration in beneficiary form; applicable law.
91-21-9.	Origination of registration in beneficiary form.
91-21-11.	Form of registration in beneficiary form.
91-21-13.	Effect of registration in beneficiary form.
91-21-15.	Ownership on death of owner.
91-21-17.	Protection of registering entity.
91-21-19.	Nontestamentary transfer on death.
91-21-21.	Terms, conditions, and forms for registration.
91-21-23.	Rules of construction.
91-21-25.	Application of chapter.

§ 91-21-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Uniform Transfer-on-Death Security Registration Act."

HISTORY: Laws, 1997, ch. 413, § 1, eff from and after passage (approved March 24, 1997).

Cross References — Whether indorsement, instruction, or entitlement order with respect to security transfers is effective, see § 75-8-107.

The transfer of securities, see § 75-8-301 et seq.

The registration of securities, see § 75-8-401 et seq.

Comparable Laws from other States — Alabama: Code of Ala. § 8-6-140 et seq.

Arkansas: A.C.A. § 28-14-101 et seq.

Connecticut: Conn. Gen. Stat. §§ 45a-468 through 45a-468m

Florida: Fla. Stat. § 711.50 et seq.

Louisiana: La. R.S. § 9:1711 et seq.

New Jersey: N.J. Stat. § 3B:30-1 et seq.

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. 2d, Gifts § 3.

Practice References.

Bickel and Flannery, Living Trusts: Forms and Practice (Matthew Bender).

Burke, Friel, and Gagliardi, Modern Estate Planning, Second Edition (Matthew Bender).

Christensen, International Estate Planning, Second Edition (Matthew Bender).

Mobley, Robinson and Hedrick, Pritchard on the Law of Wills and Administration of Estates, Seventh Edition (Michie).

Planning for Large Estates (Matthew Bender).

Schoenblum, Estate Planning Forms and Clauses (Matthew Bender).

Wyatt, Trust Administration and Taxation (Matthew Bender).

Estate Planning Package —LexisNexis Folio (LexisNexis).

Murphy's Will Clauses: Annotations and Forms with Tax Effects (Matthew Bender).

§ 91-21-3. Definitions.

In this chapter, unless the context otherwise requires:

(a) "Beneficiary form" means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(b) "Devisee" means any person designated in a will to receive a disposition of real or personal property.

(c) "Heirs" mean those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(d) "Person" means an individual, a corporation, an organization or other legal entity.

(e) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(f) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(g) "Register," including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(h) "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(i) "Security" means a share, participation, or other interest in property, in a business or in an obligation of an enterprise or other issuer and includes a certificated security, an uncertificated security, and a security account.

(j) "Security account" means:

(i) A reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account or a brokerage account, whether or not credited to the account before the owner's death;

(ii) An investment or custody account with a trust company or trust division of a bank with trust powers, including the securities in the account, a cash balance in the account and cash, cash equivalents, interest, earnings or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death; or

(iii) A cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(k) "State" includes any state of the United States, the District of

Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

HISTORY: Laws, 1997, ch. 413, § 2; Laws, 2012, ch. 335, § 1, eff from and after July 1, 2012.

Cross References — Whether indorsement, instruction, or entitlement order with respect to security transfers is effective, see § 75-8-107.

The transfer of securities, see § 75-8-301 et seq.

The registration of securities, see § 75-8-401 et seq.

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. 2d, Gifts § 3.

§ 91-21-5. Registration in beneficiary form; sole or joint tenancy ownership.

Only individuals whose registration of a security shows sole ownership by one (1) individual or multiple ownership by two (2) or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form, hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.

HISTORY: Laws, 1997, ch. 413, § 3, eff from and after passage (approved March 24, 1997).

Cross References — Whether indorsement, instruction, or entitlement order with respect to security transfers is effective, see § 75-8-107.

The transfer of securities, see § 75-8-301 et seq.

The registration of securities, see § 75-8-401 et seq.

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. 2d, Gifts § 3.

§ 91-21-7. Registration in beneficiary form; applicable law.

A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

HISTORY: Laws, 1997, ch. 413, § 4, eff from and after passage (approved March 24, 1997).

Cross References — Whether indorsement, instruction, or entitlement order with respect to security transfers is effective, see § 75-8-107.
The transfer of securities, see § 75-8-301 et seq.
The registration of securities, see § 75-8-401 et seq.

RESEARCH REFERENCES

Am. Jur.
38 Am. Jur. 2d, Gifts § 3.

§ 91-21-9. Origination of registration in beneficiary form.

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

HISTORY: Laws, 1997, ch. 413, § 5, eff from and after passage (approved March 24, 1997).

Cross References — Whether indorsement, instruction, or entitlement order with respect to security transfers is effective, see § 75-8-107.
The transfer of securities, see § 75-8-301 et seq.
The registration of securities, see § 75-8-401 et seq.

RESEARCH REFERENCES

Am. Jur.
38 Am. Jur. 2d, Gifts § 3.

§ 91-21-11. Form of registration in beneficiary form.

Registration in beneficiary form may be shown by the words “transfer on death” or the abbreviation “TOD,” or by the words “pay on death” or the abbreviation “POD,” after the name of the registered owner and before the name of a beneficiary.

HISTORY: Laws, 1997, ch. 413, § 6, eff from and after passage (approved March 24, 1997).

Cross References — Whether indorsement, instruction, or entitlement order with respect to security transfers is effective, see § 75-8-107.
The transfer of securities, see § 75-8-301 et seq.
The registration of securities, see § 75-8-401 et seq.

RESEARCH REFERENCES

Am. Jur.
38 Am. Jur. 2d, Gifts § 3.

§ 91-21-13. Effect of registration in beneficiary form.

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be cancelled or changed at any time by the sole owner or all the surviving owners without the consent of the beneficiary.

HISTORY: Laws, 1997, ch. 413, § 7, eff from and after passage (approved March 24, 1997).

Cross References — Whether indorsement, instruction, or entitlement order with respect to security transfers is effective, see § 75-8-107.

The transfer of securities, see § 75-8-301 et seq.

The registration of securities, see § 75-8-401 et seq.

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. 2d, Gifts § 3.

§ 91-21-15. Ownership on death of owner.

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

HISTORY: Laws, 1997, ch. 413, § 8, eff from and after passage (approved March 24, 1997).

Cross References — Whether indorsement, instruction, or entitlement order with respect to security transfers is effective, see § 75-8-107.

The transfer of securities, see § 75-8-301 et seq.

The registration of securities, see § 75-8-401 et seq.

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. 2d, Gifts § 3.

§ 91-21-17. Protection of registering entity.

(1) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is

offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this chapter.

(2) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this chapter.

(3) A registering entity is discharged from all claims to a security by the estate, creditors, heirs or devisee of a deceased owner if it registers a transfer of the security in accordance with Section 91-21-15 and does so in good faith reliance (a) on the registration, (b) on this chapter, and (c) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this chapter do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this chapter.

(4) The protection provided by this chapter to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

HISTORY: Laws, 1997, ch. 413, § 9, eff from and after passage (approved March 24, 1997).

Cross References — Whether indorsement, instruction, or entitlement order with respect to security transfers is effective, see § 75-8-107.

The transfer of securities, see § 75-8-301 et seq.

The registration of securities, see § 75-8-401 et seq.

RESEARCH REFERENCES

Am. Jur.

38 Am. Jur. 2d, Gifts § 3.

§ 91-21-19. Nontestamentary transfer on death.

(1) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this chapter and is not testamentary.

(2) This chapter does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

HISTORY: Laws, 1997, ch. 413, § 10, eff from and after passage (approved March 24, 1997).

Cross References — Whether indorsement, instruction, or entitlement order with respect to security transfers is effective, see § 75-8-107.

The transfer of securities, see § 75-8-301 et seq.

The registration of securities, see § 75-8-401 et seq.

RESEARCH REFERENCES

Am. Jur.
38 Am. Jur. 2d, Gifts § 3.

§ 91-21-21. Terms, conditions, and forms for registration.

(1) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (a) for registrations in beneficiary form, and (b) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes." This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registration beneficiary form, may be contained in a registering entity's terms and conditions.

(2) The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

(a) Sole owner-sole beneficiary: John S Brown TOD (or POD) John S Brown Jr.

(b) Multiple owners-sole beneficiary: John S Brown Mary B Brown JT TEN TOD John S Brown Jr.

(c) Multiple owners-primary and secondary (substituted) beneficiaries: (i) John S Brown Mary B Brown JT TEN TOD John S Brown Jr SUB BENE Peter Q Brown; or (ii) John S Brown Mary B Brown JT TEN TOD John S Brown Jr LDPS.

HISTORY: Laws, 1997, ch. 413, § 11, eff from and after passage (approved March 24, 1997).

Cross References — Whether indorsement, instruction, or entitlement order with respect to security transfers is effective, see § 75-8-107.

The transfer of securities, see § 75-8-301 et seq.

The registration of securities, see § 75-8-401 et seq.

RESEARCH REFERENCES

Am. Jur.
38 Am. Jur. 2d, Gifts § 3.

§ 91-21-23. Rules of construction.

(1) This chapter shall be liberally construed and applied to promote its underlying purposes and policy and to make uniform the laws with respect to the subject of these sections among states enacting them.

(2) Unless displaced by the particular provisions of this chapter, the principles of law and equity supplement its provisions.

HISTORY: Laws, 1997, ch. 413, § 12, eff from and after passage (approved March 24, 1997).

Cross References — Whether indorsement, instruction, or entitlement order with respect to security transfers is effective, see § 75-8-107.

The transfer of securities, see § 75-8-301 et seq.

The registration of securities, see § 75-8-401 et seq.

RESEARCH REFERENCES

Am. Jur.
38 Am. Jur. 2d, Gifts § 3.

§ 91-21-25. Application of chapter.

This chapter applies to registrations of securities in beneficiary form made before or after July 1, 1997, by decedents dying on or after July 1, 1997.

HISTORY: Laws, 1997, ch. 413, § 13, eff from and after passage (approved March 24, 1997).

Cross References — Whether indorsement, instruction, or entitlement order with respect to security transfers is effective, see § 75-8-107.

The transfer of securities, see § 75-8-301 et seq.

The registration of securities, see § 75-8-401 et seq.

RESEARCH REFERENCES

Am. Jur.
38 Am. Jur. 2d, Gifts § 3.

CHAPTER 23.

REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

Sec.

91-23-1. Short title.
91-23-3. Definitions.
91-23-5. Applicability.
91-23-7. User direction for disclosure of digital assets.
91-23-9. Terms-of-service agreement.
91-23-11. Procedure for disclosing digital assets.
91-23-13. Disclosure of content of electronic communications of deceased user.
91-23-15. Disclosure of other digital assets of deceased user.
91-23-17. Disclosure of content of electronic communications of principal.
91-23-19. Disclosure of other digital assets of principal.
91-23-21. Disclosure of digital assets held in trust when trustee is original user.
91-23-23. Disclosure of contents of electronic communications held in trust when trustee not original user.
91-23-25. Disclosure of other digital assets held in trust when trustee not original user.
91-23-27. Disclosure of digital assets to conservator of protected person.
91-23-29. Fiduciary duty and authority.
91-23-31. Custodian compliance and immunity.
91-23-33. Uniformity of application and construction.
91-23-35. Relation to Electronic Signatures in Global and National Commerce Act.

§ 91-23-1. Short title.

This chapter may be cited as the Revised Uniform Fiduciary Access to Digital Assets Act.

HISTORY: Laws, 2017, ch. 419, § 1, eff from and after July 1, 2017.

Comparable Laws from other States — Alaska: Alaska Stat. § 13.63.010 et seq.
Arizona: A.R.S. § 14-13101 et seq.
California: Cal Prob Code § 870 et seq.
Colorado: C.R.S. § 15-1-1501 et seq.
Connecticut: Conn. Gen. Stat. §§ 45a-334b through 45a-334s.
Hawaii: HRS § 556A-1 et seq.
Idaho: Idaho Code § 15-14-101 et seq.
Illinois: 755 ILCS 70/1 et seq.
Indiana: Burns Ind. Code Ann. § 32-39-1-1 et seq.
Kansas: K.S.A. § 58-4801 et seq.
Kentucky: KRS § 395A.010 et seq.
Maine: 18-C M.R.S. § 10-101 et seq.
Minnesota: Minn. Stat. § 521A.01 et seq.
Montana: 72-31-401, MCA et seq.
Nebraska: R.R.S. Neb. § 30-501 et seq.
New Hampshire: RSA 554-A:1 et seq.
North Carolina: N.C. Gen. Stat. § 36F-1 et seq.
Tennessee: Tenn. Code Ann. § 35-8-101 et seq.
Texas: Tex. Estates Code.
Vermont: 14 V.S.A. § 3551 et seq.

§ 91-23-3. Definitions.

In this chapter the following terms shall have the meanings ascribed in this section, unless the context clearly requires otherwise:

(a) "Account" means an arrangement under a terms of service agreement in which a custodian carries, maintains, processes, receives or stores a digital asset of the user or provides goods or services to the user.

(b) "Agent" means an attorney-in-fact granted authority under a durable or nondurable power of attorney.

(c) "Carries" means engages in the transmission of an electronic communication.

(d) "Catalogue of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication and the electronic address of the person.

(e) "Conservator" means a person appointed by a court to manage the estate of a living individual and includes a guardian appointed by a court to manage the estate of a living individual, and "conservatorship" includes guardianship of the estate of a living individual.

(f) "Content of an electronic communication" means information concerning the substance or meaning of the communication which:

(i) Has been sent or received by a user;

(ii) Is in electronic storage by a custodian providing an electronic-communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and

(iii) Is not readily accessible to the public.

(g) "Court" means the chancery court.

(h) "Custodian" means a person that carries, maintains, processes, receives or stores a digital asset of a user.

(i) "Designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user.

(j) "Digital asset" means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

(k) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(*l*) "Electronic communication" has the meaning set forth in 18 USC Section 2510(12).

(m) "Electronic-communication service" means a custodian that provides to a user the ability to send or receive an electronic communication.

(n) "Fiduciary" means an original, additional, or successor personal representative, conservator, agent or trustee.

(o) "Information" means data, text, images, videos, sounds, codes, computer programs, software, databases or the like.

(p) "Online tool" means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

(q) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality, or other legal entity.

(r) "Personal representative" means an executor, administrator, special administrator or person that performs substantially the same function under law of this state other than this chapter.

(s) "Power of attorney" means a record that grants an agent authority to act in the place of a principal.

(t) "Principal" means an individual who grants authority to an agent in a power of attorney.

(u) "Protected person" means a ward or other individual for whom a conservator has been appointed and includes an individual for whom an application for the appointment of a conservator is pending.

(v) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(w) "Remote-computing service" means a custodian that provides to a user computer processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 USC Section 2510(14).

(x) "Terms-of-service agreement" means an agreement that controls the relationship between a user and a custodian.

(y) "Trustee" means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. The term also includes a successor trustee.

(z) "User" means a person that has an account with a custodian.

(aa) "Will" includes a codicil, testamentary instrument that only appoints an executor and an instrument that revokes or revises a testamentary instrument.

HISTORY: Laws, 2017, ch. 419, § 2, eff from and after July 1, 2017.

§ 91-23-5. Applicability.

(1) This chapter applies to:

(a) A fiduciary acting under a will or power of attorney executed before, on, or after July 1, 2017;

(b) A personal representative acting for a decedent who died before, on, or after July 1, 2017;

(c) A conservatorship proceeding commenced before, on, or after July 1, 2017; and

(d) A trustee acting under a trust created before, on, or after July 1, 2017.

(2) This chapter applies to a custodian if the user resides in this state or resided in this state at the time of the user's death.

(3) This chapter does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

HISTORY: Laws, 2017, ch. 419, § 3, eff from and after July 1, 2017.

§ 91-23-7. User direction for disclosure of digital assets.

(1) A user may use an online tool to direct the custodian to disclose to a designated recipient or not to disclose some or all of the user's digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney or other record.

(2) If a user has not used an online tool to give direction under subsection (1) or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney, or other record, disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

(3) A user's direction under subsection (1) or (2) overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.

HISTORY: Laws, 2017, ch. 419, § 4, eff from and after July 1, 2017.

§ 91-23-9. Terms-of-service agreement.

(1) This chapter does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

(2) This chapter does not give a fiduciary or designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

(3) A fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided direction under Section 91-23-7.

HISTORY: Laws, 2017, ch. 419, § 5, eff from and after July 1, 2017.

§ 91-23-11. Procedure for disclosing digital assets.

(1) When disclosing digital assets of a user under this chapter, the custodian may at its sole discretion:

(a) Grant a fiduciary or designated recipient full access to the user's account;

(b) Grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

(c) Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(2) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this chapter.

(3) A custodian need not disclose under this chapter a digital asset deleted by a user.

(4) If a user directs or a fiduciary requests a custodian to disclose under this chapter some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

(a) A subset limited by date of the user's digital assets;

(b) All of the user's digital assets to the fiduciary or designated recipient;

(c) None of the user's digital assets; or

(d) All of the user's digital assets to the court for review in camera.

HISTORY: Laws, 2017, ch. 419, § 6, eff from and after July 1, 2017.

§ 91-23-13. Disclosure of content of electronic communications of deceased user.

If a deceased user consented or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the custodian:

(a) A written request for disclosure in physical or electronic form;

(b) A certified copy of the death certificate of the user;

(c) A certified copy of letters of administration or letters testamentary of the representative;

(d) Unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney or other record evidencing the user's consent to disclosure of the content of electronic communications; and

(e) If requested by the custodian:

(i) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(ii) Evidence linking the account to the user; or

(iii) A finding by the court that:

1. The user had a specific account with the custodian, identifiable by the information specified in subparagraph (i);

2. Disclosure of the content of electronic communications of the user would not violate 18 USC Section 2701 et seq., 47 USC Section 222, or other applicable law;

3. Unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or

4. Disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

HISTORY: Laws, 2017, ch. 419, § 7, eff from and after July 1, 2017.

§ 91-23-15. Disclosure of other digital assets of deceased user.

Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user, if the representative gives the custodian:

(a) A written request for disclosure in physical or electronic form;

(b) A certified copy of the death certificate of the user;

(c) A certified copy of letters of administration or letters testamentary of the representative; and

(d) If requested by the custodian:

(i) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(ii) Evidence linking the account to the user;

(iii) An affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or

(iv) A finding by the court that:

1. The user had a specific account with the custodian, identifiable by the information specified in subparagraph (i); or

2. Disclosure of the user's digital assets is reasonably necessary for administration of the estate.

HISTORY: Laws, 2017, ch. 419, § 8, eff from and after July 1, 2017.

§ 91-23-17. Disclosure of content of electronic communications of principal.

To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian:

(a) A written request for disclosure in physical or electronic form;

(b) An original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;

(c) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(d) If requested by the custodian:

(i) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(ii) Evidence linking the account to the principal.

HISTORY: Laws, 2017, ch. 419, § 9, eff from and after July 1, 2017.

§ 91-23-19. Disclosure of other digital assets of principal.

Unless otherwise ordered by the court, directed by the principal or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:

(a) A written request for disclosure in physical or electronic form;

(b) An original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;

(c) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(d) If requested by the custodian:

(i) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(ii) Evidence linking the account to the principal.

HISTORY: Laws, 2017, ch. 419, § 10, eff from and after July 1, 2017.

§ 91-23-21. Disclosure of digital assets held in trust when trustee is original user.

Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

HISTORY: Laws, 2017, ch. 419, § 11, eff from and after July 1, 2017.

§ 91-23-23. Disclosure of contents of electronic communications held in trust when trustee not original user.

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian:

(a) A written request for disclosure in physical or electronic form;

(b) A certified copy of the trust instrument or a certification of the trust under Section 91-8-1013 that includes consent to disclosure of the content of electronic-communications to the trustee;

(c) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(d) If requested by the custodian:

(i) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(ii) Evidence linking the account to the trust.

HISTORY: Laws, 2017, ch. 419, § 12, eff from and after July 1, 2017.

§ 91-23-25. Disclosure of other digital assets held in trust when trustee not original user.

Disclosure of other digital assets held in trust when trustee not original user. Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

(a) A written request for disclosure in physical or electronic form;

(b) A certified copy of the trust instrument or a certification of the trust under Section 91-8-1013;

(c) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(d) If requested by the custodian:

(i) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(ii) Evidence linking the account to the trust.

HISTORY: Laws, 2017, ch. 419, § 13, eff from and after July 1, 2017.

§ 91-23-27. Disclosure of digital assets to conservator of protected person.

(1) After an opportunity for a hearing under Chapter 13, Title 93, Mississippi Code of 1972, the court may grant a conservator access to the digital assets of a protected person.

(2) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a conservator the catalogue of electronic communications sent or received by a protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the conservator gives the custodian:

(a) A written request for disclosure in physical or electronic form;

(b) A certified copy of the court order that gives the conservator authority over the digital assets of the protected person; and

(c) If requested by the custodian:

(i) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person; or

(ii) Evidence linking the account to the protected person.

(3) A conservator with general authority to manage the assets of a protected person may request a custodian of the digital assets of the protected person to suspend or terminate an account of the protected person for good cause. A request made under this section must be accompanied by a certified copy of the court order giving the conservator authority over the protected person's property.

HISTORY: Laws, 2017, ch. 419, § 14, eff from and after July 1, 2017.

§ 91-23-29. Fiduciary duty and authority.

(1) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

(a) The duty of care;

(b) The duty of loyalty; and

(c) The duty of confidentiality.

(2) A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

(a) Except as otherwise provided in Section 91-23-7, is subject to the applicable terms of service;

(b) Is subject to other applicable law, including copyright law;

(c) In the case of a fiduciary, is limited by the scope of the fiduciary's duties; and

(d) May not be used to impersonate the user.

(3) A fiduciary with authority over the property of a decedent, protected person, principal or settlor has the right to access any digital asset in which the decedent, protected person, principal or settlor had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

(4) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including Section 97-45-3.

(5) A fiduciary with authority over the tangible, personal property of a decedent, protected person, principal or settlor:

(a) Has the right to access the property and any digital asset stored in it; and

(b) Is an authorized user for the purpose of computer fraud and unauthorized computer access laws, including Section 97-45-3.

(6) A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

(7) A fiduciary of a user may request a custodian to terminate the user's

account. A request for termination must be in writing, in either physical or electronic form, and accompanied by:

(a) If the user is deceased, a certified copy of the death certificate of the user;

(b) A certified copy of the letters of administration or letters testamentary of the representative, court order, power of attorney, or trust giving the fiduciary authority over the account; and

(c) If requested by the custodian:

(i) A number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(ii) Evidence linking the account to the user; or

(iii) A finding by the court that the user had a specific account with the custodian, identifiable by the information specified in subparagraph (i) of this paragraph (c).

HISTORY: Laws, 2017, ch. 419, § 15, eff from and after July 1, 2017.

§ 91-23-31. Custodian compliance and immunity.

(1) Not later than sixty (60) days after receipt of the information required under Sections 91-23-13 through 91-23-29, a custodian shall comply with a request under this chapter from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

(2) An order under subsection (1) directing compliance must contain a finding that compliance is not in violation of 18 USC Section 2702.

(3) A custodian may notify the user that a request for disclosure or to terminate an account was made under this chapter.

(4) A custodian may deny a request under this chapter from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

(5) This chapter does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this chapter to obtain a court order which:

(a) Specifies that an account belongs to the protected person or principal;

(b) Specifies that there is sufficient consent from the protected person or principal to support the requested disclosure; and

(c) Contains a finding required by law other than this chapter.

(6) A custodian and its officers, employees and agents are immune from liability for an act or omission done in good faith in compliance with this chapter.

HISTORY: Laws, 2017, ch. 419, § 16, eff from and after July 1, 2017.

§ 91-23-33. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

HISTORY: Laws, 2017, ch. 419, § 17, eff from and after July 1, 2017.

§ 91-23-35. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits or supersedes the Electronic Signatures in Global and National Commerce Act, 15 USC Section 7001 et seq., but does not modify, limit or supersede Section 101(c) of that act, 15 USC Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 USC Section 7003(b).

HISTORY: Laws, 2017, ch. 419, § 18, eff from and after July 1, 2017.

CHAPTER 25.

MISSISSIPPI UNIFORM ESTATE TAX APPORTIONMENT ACT.

Sec.

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§ 91-25-1. Short title.

This chapter may be cited as the Mississippi Uniform Estate Tax Apportionment Act.

HISTORY: Laws, 2020, ch. 406, § 33, eff from and after July 1, 2020.

§ 91-25-3. Definitions.

In this chapter:

(1) "Apportionable estate" means the value of the gross estate as finally determined for purposes of the estate tax to be apportioned reduced by:

(A) Any claim or expense allowable as a deduction for purposes of the tax;

(B) The value of any interest in property that, for purposes of the tax, qualifies for a marital or charitable deduction or otherwise is deductible or is exempt; and

(C) Any amount added to the decedent's gross estate because of a gift tax on transfers made before death.

(2) "Chancery court" means the chancery court where the decedent's will is probated in the State of Mississippi.

(3) "Estate tax" means a federal, state, or foreign tax imposed because of the death of an individual and interest and penalties associated with the tax. The term does not include an inheritance tax, income tax, or generation-skipping transfer tax other than a generation-skipping transfer tax incurred on a direct skip taking effect at death.

(4) "Gross estate" means, with respect to an estate tax, all interests in property subject to the tax.

(5) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(6) "Ratable" means apportioned or allocated pro rata according to the relative values of interests to which the term is to be applied. "Ratably" has a corresponding meaning.

(7) "Time-limited interest" means an interest in property which terminates on a lapse of time or on the occurrence or nonoccurrence of an event or which is subject to the exercise of discretion that could transfer a beneficial interest to another person. The term does not include a cotenancy unless the cotenancy itself is a time-limited interest. The term also does not include an interest in property to the extent the beneficiary has the sole right to accelerate, require or elect to receive a distribution of the property.

(8) "Value" means, with respect to an interest in property, fair market value as finally determined for purposes of the estate tax that is to be apportioned, reduced by any outstanding debt secured by the interest without reduction for taxes paid or required to be paid or for any special valuation adjustment.

HISTORY: Laws, 2020, ch. 406, § 34, eff from and after July 1, 2020.

§ 91-25-5. Apportionment by will or other dispositive instrument.

(a) Except as otherwise provided in subsection (c), the following rules apply:

(1) To the extent that a provision of a decedent's will expressly and unambiguously directs the apportionment of an estate tax, the tax must be apportioned accordingly.

(2) Any portion of an estate tax not apportioned under paragraph (1) must be apportioned in accordance with any provision of a revocable trust of which the decedent was the settlor which expressly and unambiguously directs the apportionment of an estate tax. If conflicting apportionment provisions appear in two (2) or more revocable trust instruments, the provision in the most recently dated instrument prevails. For purposes of this paragraph:

(A) A trust is revocable if it was revocable immediately after the trust instrument was executed, even if the trust subsequently becomes irrevocable; and

(B) The date of an amendment to a revocable trust instrument is the date of the amended instrument only if the amendment contains an apportionment provision.

(3) If any portion of an estate tax is not apportioned under paragraph (1) or (2), and a provision in any other dispositive instrument expressly and unambiguously directs that any interest in the property disposed of by the instrument is or is not to be applied to the payment of the estate tax

attributable to the interest disposed of by the instrument, the provision controls the apportionment of the tax to that interest.

(b) Subject to subsection (c), and unless the decedent expressly and unambiguously directs the contrary, the following rules apply:

(1) If an apportionment provision directs that a person receiving an interest in property under an instrument is to be exonerated from the responsibility to pay an estate tax that would otherwise be apportioned to the interest, the tax attributable to the exonerated interest must be apportioned ratably among all the other persons receiving interests in the apportionable estate that are not exonerated from apportionment of the tax.

(2) If an apportionment provision directs that an estate tax is to be apportioned to an interest in property a portion of which qualifies for a marital or charitable deduction, the estate tax must first be apportioned ratably among the holders of the portion that does not qualify for a marital or charitable deduction and then apportioned ratably among the holders of the deductible portion to the extent that the value of the nondeductible portion is insufficient.

(3) Except as otherwise provided in paragraph (4), if an apportionment provision directs that an estate tax be apportioned to property in which one or more time-limited interests exist, other than interests in specified property under Section 91-25-13, the tax must be apportioned to the principal of that property, regardless of the deductibility of some of the interests in that property.

(4) If an apportionment provision directs that an estate tax is to be apportioned to the holders of interests in property in which one or more time-limited interests exist and a charity has an interest that otherwise qualifies for an estate tax charitable deduction, the tax must first be apportioned, to the extent feasible, to interests in property that have not been distributed to the persons entitled to receive the interests. No tax shall be paid from a charitable remainder annuity trust or charitable remainder unitrust described in Section 664 of the Internal Revenue Code (26 U.S.C. Section 664) and created during the decedent's life.

(c) A provision that apportions an estate tax is ineffective to the extent that it increases the tax apportioned to a person having an interest in the gross estate over which the decedent had no power to transfer immediately before the decedent executed the instrument in which the apportionment direction was made. For purposes of this subsection, a testamentary power of appointment is a power to transfer the property that is subject to the power.

HISTORY: Laws, 2020, ch. 406, § 35, eff from and after July 1, 2020.

§ 91-25-7. Statutory apportionment of estate taxes.

To the extent that apportionment of an estate tax is not controlled by an instrument described in Section 91-25-5 and except as otherwise provided in Sections 91-25-11 and 91-25-13, the following rules apply:

(1) Subject to paragraphs (2), (3) and (4), the estate tax is apportioned ratably to each person that has an interest in the apportionable estate.

(2) A generation-skipping transfer tax incurred on a direct skip taking effect at death is charged to the person to which the interest in property is transferred.

(3) If property is included in the decedent's gross estate because of Section 2044 of the Internal Revenue Code of 1986 or any similar estate tax provision, the difference between the total estate tax for which the decedent's estate is liable and the amount of estate tax for which the decedent's estate would have been liable if the property had not been included in the decedent's gross estate is apportioned ratably among the holders of interests in the property. The balance of the tax, if any, is apportioned ratably to each other person having an interest in the apportionable estate.

(4) Except as otherwise provided in Section 91-25-5(b)(4) and except as to property to which Section 91-25-13 applies, an estate tax apportioned to persons holding interests in property subject to a time-limited interest must be apportioned, without further apportionment, to the principal of that property.

HISTORY: Laws, 2020, ch. 406, § 36, eff from and after July 1, 2020.

§ 91-25-9. Credits and deferrals.

Except as otherwise provided in Sections 91-25-11 and 91-25-13, the following rules apply to credits and deferrals of estate taxes:

(1) A credit resulting from the payment of gift taxes or from estate taxes paid on property previously taxed inures ratably to the benefit of all persons to which the estate tax is apportioned.

(2) A credit for state or foreign estate taxes inures ratably to the benefit of all persons to which the estate tax is apportioned, except that the amount of a credit for a state or foreign tax paid by a beneficiary of the property on which the state or foreign tax was imposed, directly or by a charge against the property, inures to the benefit of the beneficiary.

(3) If payment of a portion of an estate tax is deferred because of the inclusion in the gross estate of a particular interest in property, the benefit of the deferral inures ratably to the persons to which the estate tax attributable to the interest is apportioned. The burden of any interest charges incurred on a deferral of taxes and the benefit of any tax deduction associated with the accrual or payment of the interest charge is allocated ratably among the persons receiving an interest in the property.

HISTORY: Laws, 2020, ch. 406, § 37, eff from and after July 1, 2020.

§ 91-25-11. Insulated property; advancement of tax.

(a) In this section:

(1) "Advanced fraction" means a fraction that has as its numerator the amount of the advanced tax and as its denominator the value of the interests in insulated property to which that tax is attributable.

(2) "Advanced tax" means the aggregate amount of estate tax attributable to interests in insulated property which is required to be advanced by uninsulated holders under subsection (c).

(3) "Insulated property" means property subject to a time-limited interest which is included in the apportionable estate but is unavailable for payment of an estate tax because of impossibility or impracticability.

(4) "Uninsulated holder" means a person who has an interest in uninsulated property.

(5) "Uninsulated property" means property included in the apportionable estate other than insulated property.

(b) If an estate tax is to be advanced under subsection (c) by persons holding interests in uninsulated property subject to a time-limited interest other than property to which Section 91-25-13 applies, the tax must be advanced, without further apportionment, from the principal of the uninsulated property.

(c) Subject to Section 91-25-17(b) and (d), an estate tax attributable to interests in insulated property must be advanced ratably by uninsulated holders. If the value of an interest in uninsulated property is less than the amount of estate taxes otherwise required to be advanced by the holder of that interest, the deficiency must be advanced ratably by the persons holding interests in properties that are excluded from the apportionable estate under Section 91-25-3(1)(B) as if those interests were in uninsulated property.

(d) A court having jurisdiction to determine the apportionment of an estate tax may require a beneficiary of an interest in insulated property to pay all or part of the estate tax otherwise apportioned to the interest if the court finds that it would be substantially more equitable for that beneficiary to bear the tax liability personally than for that part of the tax to be advanced by uninsulated holders.

(e) When a distribution of insulated property is made, each uninsulated holder may recover from the distributee a ratable portion of the advanced fraction of the property distributed. To the extent that undistributed insulated property ceases to be insulated, each uninsulated holder may recover from the property a ratable portion of the advanced fraction of the total undistributed property.

(f) Upon payment by an uninsulated holder of estate tax required to be advanced, a court may require the beneficiary of an interest in insulated property to provide a bond or other security, including a recordable lien on the property of the beneficiary, for repayment of the advanced tax.

HISTORY: Laws, 2020, ch. 406, § 38, eff from and after July 1, 2020.

§ 91-25-13. Apportionment and recapture of special elective benefits.

(a) In this section:

(1) "Special elective benefit" means a reduction in an estate tax obtained by an election for:

(A) A reduced valuation of specified property that is included in the gross estate;

(B) A deduction from the gross estate, other than a marital or charitable deduction, allowed for specified property; or

(C) An exclusion from the gross estate of specified property.

(2) "Specified property" means property for which an election has been made for a special elective benefit.

(b) If an election is made for one or more special elective benefits, an initial apportionment of a hypothetical estate tax must be computed as if no election for any of those benefits had been made. The aggregate reduction in estate tax resulting from all elections made must be allocated among holders of interests in the specified property in the proportion that the amount of deduction, reduced valuation, or exclusion attributable to each holder's interest bears to the aggregate amount of deductions, reduced valuations, and exclusions obtained by the decedent's estate from the elections. If the estate tax initially apportioned to the holder of an interest in specified property is reduced to zero, any excess amount of reduction reduces ratably the estate tax apportioned to other persons that receive interests in the apportionable estate.

(c) An additional estate tax imposed to recapture all or part of a special elective benefit must be charged to the persons that are liable for the additional tax under the law providing for the recapture.

HISTORY: Laws, 2020, ch. 406, § 39, eff from and after July 1, 2020.

§ 91-25-15. Securing payment of estate tax from property in possession of fiduciary.

(a) A fiduciary may defer a distribution of property until the fiduciary is satisfied that adequate provision for payment of the estate tax has been made.

(b) A fiduciary may withhold from a distributee an amount equal to the amount of estate tax apportioned to an interest of the distributee and the estate tax required to be advanced by the distributee.

(c) As a condition to a distribution, a fiduciary may require the distributee to provide a bond or other security for the portion of the estate tax apportioned to the distributee and also for the estate tax required to be advanced by the distributee.

HISTORY: Laws, 2020, ch. 406, § 40, eff from and after July 1, 2020.

§ 91-25-17. Collection of estate tax by fiduciary.

(a) A fiduciary responsible for payment of an estate tax may collect from any person the estate tax apportioned to and the tax required to be advanced by the person.

(b) Except as otherwise provided in Section 27-10-61, any estate tax due from a person that cannot be collected from the person may be collected by the fiduciary from other persons in the following order of priority:

(1) Any person having an interest in the apportionable estate which is not exonerated from the tax;

(2) Any other person having an interest in the apportionable estate; or

(3) Any person having an interest in the gross estate.

(c) A domiciliary fiduciary may recover from an ancillary personal representative the estate tax apportioned to the property controlled by the ancillary personal representative.

(d) The total tax collected from a person under this chapter may not exceed the value of the person's interest.

HISTORY: Laws, 2020, ch. 406, § 41, eff from and after July 1, 2020.

§ 91-25-19. Right of reimbursement.

(a) A person required under Section 91-25-17 to pay an estate tax greater than the amount due from the person under Section 91-25-5 or 91-25-7 has a right to reimbursement from another person to the extent that the other person has not paid the tax required by Section 91-25-5 or 91-25-7 and a right to reimbursement ratably from other persons to the extent that each has not contributed a portion of the amount collected under Section 91-25-17(b). The right to reimbursement includes the right to receive interest on the amount of the estate tax payment from the date of the payment to the date of reimbursement at the interest rate that would be charged during such period on an estate tax deficiency by the taxing authority that imposed the estate tax. The right of reimbursement also includes the reasonable costs of collection, including attorney's fees.

(b) A fiduciary may enforce the right of reimbursement under subsection (a) on behalf of the person that is entitled to the reimbursement and shall take reasonable steps to do so if requested by the person.

HISTORY: Laws, 2020, ch. 406, § 42, eff from and after July 1, 2020.

§ 91-25-21. Action to determine or enforce chapter.

(a) The chancery court has jurisdiction and all power necessary to make the prorations and the orders directing the payment of amounts of tax contemplated by this chapter.

(b) Such jurisdiction may be invoked by petition filed in the chancery court by an executor, administrator, temporary administrator, trustee or other person acting in a fiduciary capacity, transferee, beneficiary of the gross estate, or any other person having such an interest as may in the judgment of the chancery court entitle such person to file such a petition.

(c) The chancery court, upon making a determination as provided in this chapter, shall make a decree or order directing the executor, administrator or other fiduciary to charge the prorated amounts against the persons against whom the tax has been so prorated, insofar as such person is in possession of property or interests of such persons against whom such charge has been made, and summarily directing all other persons against whom the tax has been so prorated or who are in possession of property or interests of such persons to make payment of such prorated amounts to such executor, administrator or other fiduciary or to another person who has paid such tax.

HISTORY: Laws, 2020, ch. 406, § 43, eff from and after July 1, 2020.

§ 91-25-23. Uniformity of application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

HISTORY: Laws, 2020, ch. 406, § 44, eff from and after July 1, 2020.

§ 91-25-25. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: Laws, 2020, ch. 406, § 45, eff from and after July 1, 2020.

§ 91-25-27. Delayed application.

(a) This chapter does not apply to the estate of a decedent who dies on or within one (1) year after July 1, 2020, nor with respect to a decedent who dies more than one (1) year after July 1, 2020, if the decedent continuously lacked testamentary capacity from the expiration of the one-year period until the date of death.

(b) With respect to a decedent who dies on or after July 1, 2020, to whom this chapter does not apply, estate taxes must be apportioned under the law in effect on the day before July 1, 2020.

(c) Notwithstanding the provisions of subsections (a) and (b), this chapter applies with respect to a decedent to whom the provisions would not otherwise apply if the decedent expressly and unambiguously directs that the provisions shall apply to such decedent.

HISTORY: Laws, 2020, ch. 406, § 46, eff from and after July 1, 2020.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (c) by substituting "subsections (a) and (b)" for "subsection (a) and (b)." The Joint Committee ratified the correction at its August 20, 2021, meeting.

CHAPTER 27.

MISSISSIPPI REAL PROPERTY TRANSFER-ON-DEATH ACT

Sec.

91-27-1. Short title.
91-27-3. Definitions.
91-27-5. Applicability.
91-27-7. Nonexclusivity.
91-27-9. Transfer-on-death deed authorized.
91-27-11. Transfer-on-death deed revocable.
91-27-13. Transfer-on-death deed nontestamentary.
91-27-15. Capacity of transferor.
91-27-17. Requirements.
91-27-19. Notice, delivery, acceptance, consideration not required.
91-27-21. Revocation by instrument authorized; revocation by act not permitted.
91-27-23. Effect of transfer-on-death deed during transferor's life.
91-27-25. Effect of subsequent conveyance on transfer-on-death deed.
91-27-27. Effect of transfer-on-death deed at transferor's death.
91-27-29. Transfer-on-death deed property subject to liens and encumbrances at transferor's death; creditors' claims.
91-27-31. Disclaimer.
91-27-33. Optional form for transfer-on-death deed.
91-27-35. Optional form of revocation.
91-27-37. Relation to Electronic Signatures in Global and National Commerce Act.

§ 91-27-1. Short title.

This chapter may be cited as the Mississippi Real Property Transfer-On-Death Act.

HISTORY: Laws, 2020, ch. 406, § 1, eff from and after July 1, 2020.

§ 91-27-3. Definitions.

(a) "Beneficiary" means a person who receives real property under a transfer-on-death deed.

(b) "Designated beneficiary" means a person designated to receive real property in a transfer-on-death deed.

(c) "Joint owner with right of survivorship" or "joint owner" means an individual who owns real property concurrently with one or more other individuals with a right of survivorship. The term includes a joint tenant and a tenant by the entirety. The term does not include a tenant in common.

(d) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(e) "Real property" means an interest in real property located in this state.

(f) "Transfer-on-death deed" means a deed authorized under this chapter and does not refer to any other deed that transfers an interest in real property on the death of an individual.

(g) "Transferor" means an individual who makes a transfer-on-death deed.

(h) In this chapter, the terms "cancel" and "revoke" are synonymous.

HISTORY: Laws, 2020, ch. 406, § 2, eff from and after July 1, 2020.

§ 91-27-5. Applicability.

This chapter applies to a transfer-on-death deed executed and acknowledged on or after July 1, 2020, by a transferor who dies on or after July 1, 2020.

HISTORY: Laws, 2020, ch. 406, § 3, eff from and after July 1, 2020.

§ 91-27-7. Nonexclusivity.

This chapter does not affect any method of transferring real property otherwise permitted under the laws of this state.

HISTORY: Laws, 2020, ch. 406, § 4, eff from and after July 1, 2020.

§ 91-27-9. Transfer-on-death deed authorized.

An individual may transfer the individual's interest in real property to one or more beneficiaries effective at the transferor's death by a transfer-on-death deed.

HISTORY: Laws, 2020, ch. 406, § 5, eff from and after July 1, 2020.

§ 91-27-11. Transfer-on-death deed revocable.

A transfer-on-death deed must be executed as set forth in Title 89, Chapter 3, Mississippi Code or 1972, relating to necessary acknowledgements, and need not be executed with the formalities of a will.

HISTORY: Laws, 2020, ch. 406, § 6, eff from and after July 1, 2020.

§ 91-27-13. Transfer-on-death deed nontestamentary.

A transfer-on-death deed is a nontestamentary instrument.

HISTORY: Laws, 2020, ch. 406, § 7, eff from and after July 1, 2020.

§ 91-27-15. Capacity of transferor.

(a) The capacity required to make or revoke a transfer-on-death deed is the same as the capacity required to make a contract.

(b) A transfer-on-death deed may not be created through use of a power of attorney unless the transfer of real property through a transfer-on-death deed is specifically authorized in the power of attorney.

HISTORY: Laws, 2020, ch. 406, § 8, eff from and after July 1, 2020.

§ 91-27-17. Requirements.

To be effective, a transfer-on-death deed must:

(1) Except as otherwise provided in subsection (2), contain the essential elements and formalities of a recordable deed;

(2) State that the transfer of an interest in real property to the designated beneficiary is to occur at the transferor's death;

(3) Be recorded before the transferor's death in the deed records in the official records of the chancery clerk of the county where the real property is located.

HISTORY: Laws, 2020, ch. 406, § 9, eff from and after July 1, 2020.

§ 91-27-19. Notice, delivery, acceptance, consideration not required.

A transfer-on-death deed is effective without:

(1) Notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or

(2) Consideration.

HISTORY: Laws, 2020, ch. 406, § 10, eff from and after July 1, 2020.

§ 91-27-21. Revocation by instrument authorized; revocation by act not permitted.

(a) Subject to subsections (d) and (e), an instrument is effective to revoke a recorded transfer-on-death deed, or any part of it, if the instrument:

(1) Is one (1) of the following:

(A) A subsequent transfer-on-death deed that revokes the preceding transfer-on-death deed or part of the deed expressly or by inconsistency; or

(B) Except as provided by subsection (b), an instrument of revocation that expressly revokes the transfer-on-death deed or part of the deed;

(2) Is acknowledged by the transferor after the acknowledgment of the deed being revoked; and

(3) Is recorded before the transferor's death in the official records of the chancery clerk of the county where the deed being revoked is recorded.

(b) A will does not revoke or supersede a transfer-on-death deed.

(c) If a marriage between the transferor and a designated beneficiary is dissolved after a transfer-on-death deed is recorded, a final judgment of the court dissolving the marriage operates to revoke the transfer-on-death deed as to that designated beneficiary.

(d) If a transfer-on-death deed is made by more than one (1) transferor, revocation by a transferor does not affect the deed as to the interest of another transferor who does not make that revocation.

(e) A transfer-on-death deed made by joint owners with right of survivorship is revoked only if it is revoked by all of the living joint owners.

(f) This section does not limit the effect of an inter vivos transfer of the real property.

HISTORY: Laws, 2020, ch. 406, § 11, eff from and after July 1, 2020.

§ 91-27-23. Effect of transfer-on-death deed during transferor's life.

During a transferor's life, a transfer-on-death deed does not:

(1) Affect an interest or right of the transferor or any other owner, including:

(A) The right to transfer or encumber the real property that is the subject of the deed;

(B) Homestead rights in the real property, if applicable; and

(C) Ad valorem tax exemptions, including exemptions for residence homestead, persons sixty-five (65) years of age or older, persons with disabilities, and veterans;

(2) Affect an interest or right of a transferee of the real property that is the subject of the deed, even if the transferee has actual or constructive notice of the deed;

(3) Affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;

(4) Affect the transferor's or designated beneficiary's eligibility for any form of public assistance, subject to applicable federal law;

(5) Constitute a transfer triggering a "due-on-sale" or similar clause;

(6) Invoke statutory real estate notice or disclosure requirements;

(7) Create a legal or equitable interest in favor of the designated beneficiary; or

(8) Subject the real property to claims or process of a creditor of the designated beneficiary.

HISTORY: Laws, 2020, ch. 406, § 12, eff from and after July 1, 2020.

§ 91-27-25. Effect of subsequent conveyance on transfer-on-death deed.

An otherwise valid transfer-on-death deed is void as to any interest in real property that is conveyed by the transferor during the transferor's lifetime after the transfer-on-death deed is executed and recorded if:

(1) A valid instrument conveying the interest is recorded in the official records of the chancery clerk of the same county in which the transfer-on-death deed is recorded; and

(2) The recording of the instrument occurs before the transferor's death.

HISTORY: Laws, 2020, ch. 406, § 13, eff from and after July 1, 2020.

§ 91-27-27. Effect of transfer-on-death deed at transferor's death.

On the death of the transferor, the following rules apply to an interest in real property that is the subject of a transfer-on-death deed and owned by the transferor at death except as otherwise provided: in the transfer-on-death deed; in this chapter; in Title 91, Chapter 29, Mississippi Code of 1972, relating to revocation by divorce; in Section 91-1-25 relating to the prohibition on inheriting from a person whom one has killed; in Title 91, Chapter 3, Mississippi Code of 1972, the Mississippi Uniform Simultaneous Death Act; and in Section 91-5-25 relating to the spousal right to renounce a will:

(1) If a transferor is a joint owner with right of survivorship who is survived by one or more other joint owners, the real property that is the subject of the transfer-on-death deed belongs to the surviving joint owner or owners. If a transferor is a joint owner with right of survivorship who is the last-surviving joint owner, the transfer-on-death deed is effective.

(2) The last-surviving joint owner may revoke the transfer-on-death deed subject to Section 91-27-19.

(3) A transfer-on-death deed transfers real property without covenant or warranty of title even if the deed contains a contrary provision.

(4) The interest in the property is transferred to a designated beneficiary in accordance with the deed, but the interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor. The interest of a designated beneficiary that fails to survive the transferor lapses.

(5) Concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship, but if the transferor has identified two (2) or more designated beneficiaries to receive concurrent interests in the property, the share of one which lapses or fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

HISTORY: Laws, 2020, ch. 406, § 14, eff from and after July 1, 2020.

§ 91-27-29. Transfer-on-death deed property subject to liens and encumbrances at transferor's death; creditors' claims.

Subject to Title 89, Chapter 5, Mississippi Code of 1972, relating to the recordation of instruments, a designated beneficiary takes the real property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the real property is subject at the transferor's death. For purposes of this section and Title 89, Chapter 5, Mississippi Code of 1972, the recording of the transfer-on-death deed is considered to have occurred at the transferor's death.

HISTORY: Laws, 2020, ch. 406, § 15, eff from and after July 1, 2020.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal reference in the last sentence of the section by substituting "this section" for "this subsection." The Joint Committee ratified the corrections at its October 19, 2020, meeting.

§ 91-27-31. Disclaimer.

A designated beneficiary may disclaim all or part of the designated beneficiary's interest as provided by the Mississippi Uniform Disclaimer of Property Interests Act (2002/2010), Title 89, Chapter 22, Mississippi Code of 1972.

HISTORY: Laws, 2020, ch. 406, § 16, eff from and after July 1, 2020.

§ 91-27-33. Optional form for transfer-on-death deed.

The following form may be used to create a transfer-on-death deed. This chapter governs the effect of this or any other instrument used to create a transfer-on-death deed:

REVOCABLE TRANSFER-ON-DEATH DEED

NOTICE TO OWNER

You should carefully read all information on the other side of this form. YOU MAY WANT TO CONSULT A LAWYER BEFORE USING THIS FORM.

This form must be recorded before your death, or it will not be effective.

IDENTIFYING INFORMATION

Owner or Owners Making This Deed:

______________	____________________
Printed name	Mailing address
______________	____________________
Printed name	Mailing address

Legal description of the property: ____________________________________

PRIMARY BENEFICIARY

I designate the following beneficiary if the beneficiary survives me.

______________	____________________
Printed name	Mailing address, if available

ALTERNATE BENEFICIARY - Optional

If my primary beneficiary does not survive me, I designate the following alternate beneficiary if that beneficiary survives me.

______________ ______________________

Printed name Mailing address, if available

TRANSFER-ON-DEATH

At my death, I transfer my interest in the described property to the beneficiaries as designated above.

Before my death, I have the right to revoke this deed as set forth in Section 97-27-21, Mississippi Code of 1972.

SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

____________________________________ _________________

Signature Date

____________________________________ _________________

Signature Date

ACKNOWLEDGMENT

(insert acknowledgment for deed here)

HISTORY: Laws, 2020, ch. 406, § 17, eff from and after July 1, 2020.

§ 91-27-35. Optional form of revocation.

The following form may be used to create an instrument of revocation of a transfer-on-death deed. This chapter governs the effect of this or any other instrument used to revoke a transfer-on-death deed.

REVOCATION OF TRANSFER-ON-DEATH DEED

NOTICE TO OWNER

This revocation must be recorded before you die or it will not be effective. This revocation is effective only as to the interests in the property of owners who sign this revocation.

IDENTIFYING INFORMATION

Owner or Owners of Property Making This Revocation:

______________ ______________________

Printed name Mailing address

________________ ________________________
Printed name Mailing address

Legal description of the property: ____

REVOCATION

I revoke all my previous transfers of this property by transfer-on-death deed.

SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

____ ___________________
Signature Date

____ ___________________
Signature Date

ACKNOWLEDGMENT

(insert acknowledgment here)

HISTORY: Laws, 2020, ch. 406, § 18, eff from and after July 1, 2020.

§ 91-27-37. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

HISTORY: Laws, 2020, ch. 406, § 19, eff from and after July 1, 2020.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference at the end of the section by adding “Section 7003(b)” so that the reference to the Section 103(b) of the Electronic Signatures in Global and National Commerce Act reads: “15. U.S.C. Section 7003(b).” The Joint Committee ratified the corrections at its October 19, 2020, meeting.

CHAPTER 29.

EFFECT OF DISSOLUTION OF MARRIAGE.

Sec.	
91-29-1.	Will provisions made before dissolution of marriage.
91-29-3.	Treatment of decedent's former spouse.
91-29-5.	Definitions.
91-29-7.	Revocation of certain nontestamentary transfers; treatment of former spouse as beneficiary under certain policies or plans.
91-29-9.	Effect of revocation.
91-29-11.	Liability of certain purchasers or recipients of certain payments, benefits, or property.
91-29-13.	Liability of former spouse for certain payments, benefits or property.
91-29-15.	Certain trusts with divorced individuals as joint settlors.
91-29-17.	Designation of former spouse or relative of former spouse on certain multiple-party accounts.
91-29-19.	Determination of consanguinity.
91-29-23.	Pre-decree designation of ex-spouse as beneficiary of life insurance.
91-29-25.	Pre-decree designation of ex-spouse as beneficiary in retirement benefits and other financial plans.
91-29-29.	Determination of affinity.

§ 91-29-1. Will provisions made before dissolution of marriage.

(a) In this section:

(1) "Irrevocable trust" means a trust:

(A) For which the trust instrument was executed before the dissolution of a testator's marriage; and

(B) That the testator was not solely empowered by law or by the trust instrument to revoke.

(2) "Relative" means an individual related to another individual by:

(A) Consanguinity, as determined under Section 91-29-17; or

(B) Affinity, as determined under Section 91-29-19.

(b) If, after the testator makes a will, the testator's marriage is dissolved by divorce, annulment, or a declaration that the marriage is void, unless the will expressly provides otherwise:

(1) All provisions in the will, including all fiduciary appointments, shall be read as if the former spouse and each relative of the former spouse who is not a relative of the testator had failed to survive the testator; and

(2) All provisions in the will disposing of property to an irrevocable trust in which a former spouse or a relative of a former spouse who is not a relative of the testator is a beneficiary or is nominated to serve as trustee or in another fiduciary capacity or that confers a general or special power of appointment on a former spouse or a relative of a former spouse who is not a relative of the testator shall be read to instead dispose of the property to a trust the provisions of which are identical to the irrevocable trust, except any provision in the irrevocable trust:

(A) Conferring a beneficial interest or a general or special power of appointment to the former spouse or a relative of the former spouse who is not a relative of the testator shall be treated as if the former spouse and each relative of the former spouse who is not a relative of the testator had disclaimed the interest granted in the provision; and

(B) Nominating the former spouse or a relative of the former spouse who is not a relative of the testator to serve as trustee or in another fiduciary capacity, or trust protector, trust advisor, investment advisor or similar capacity, shall be treated as if the former spouse and each relative of the former spouse who is not a relative of the testator had died immediately before the dissolution of the marriage.

(c) Subsection (b)(2) does not apply if one (1) of the following provides otherwise:

(1) A court order; or

(2) An express provision of a contract relating to the division of the marital estate entered into between the testator and the testator's former spouse before, during, or after the marriage.

HISTORY: Laws, 2020, ch. 406, § 20, eff from and after July 1, 2020.

§ 91-29-3. Treatment of decedent's former spouse.

A person is not a surviving spouse of a decedent if the person's marriage to the decedent has been dissolved by divorce, annulment, or a declaration that the marriage is void, unless:

(1) As the result of a subsequent marriage, the person is married to the decedent at the time of death; and

(2) The subsequent marriage is not declared void.

HISTORY: Laws, 2020, ch. 406, § 21, eff from and after July 1, 2020.

§ 91-29-5. Definitions.

In this chapter:

(1) "Disposition or appointment of property" includes a transfer of property to or a provision of another benefit to a beneficiary under a trust instrument.

(2) "Divorced individual" means an individual whose marriage has been dissolved by divorce, annulment, or a declaration that the marriage is void.

(3) "Relative" means an individual who is related to another individual by consanguinity or affinity, as determined under Sections 91-29-17 and 91-25-19.

(4) "Revocable," with respect to a disposition, appointment, provision, or nomination, means a disposition to, appointment of, provision in favor of, or nomination of an individual's spouse that is contained in a trust instrument executed by the individual before the dissolution of the individual's marriage to the spouse and that the individual was solely empowered by law or by the trust instrument to revoke regardless of whether the individual had the capacity to exercise the power at that time.

HISTORY: Laws, 2020, ch. 406, § 22, eff from and after July 1, 2020.

§ 91-29-7. Revocation of certain nontestamentary transfers; treatment of former spouse as beneficiary under certain policies or plans.

(a) The dissolution of the marriage revokes a provision in a trust instrument that was executed by a divorced individual as settlor before the divorced individual's marriage was dissolved and that:

(1) Is a revocable disposition or appointment of property made to the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual;

(2) Revocably confers a general or special power of appointment on the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual; or

(3) Revocably nominates the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual to serve:

(A) As a personal representative, trustee, conservator, agent, or guardian; or

(B) In another fiduciary or representative capacity.

(b) Subsection (a) does not apply if one (1) of the following provides otherwise:

(1) A court order;

(2) The express terms of a trust instrument executed by the divorced individual before the individual's marriage was dissolved; or

(3) An express provision of a contract relating to the division of the marital estate entered into between the divorced individual and the individual's former spouse before, during, or after the marriage.

(c) Sections 91-29-21 and 91-29-23 govern the designation of a former spouse as a beneficiary of certain life insurance policies or as a beneficiary under certain retirement benefit plans or other financial plans.

HISTORY: Laws, 2020, ch. 406, § 23, eff from and after July 1, 2020.

§ 91-29-9. Effect of revocation.

(a) An interest granted in a provision of a trust instrument that is revoked under Section 91-29-7(a)(1) or (2) passes as if the former spouse of the divorced individual who executed the trust instrument and each relative of the former spouse who is not a relative of the divorced individual disclaimed the interest granted in the provision.

(b) An interest granted in a provision of a trust instrument that is revoked under Section 91-29-7(a)(3) passes as if the former spouse and each relative of the former spouse who is not a relative of the divorced individual died immediately before the dissolution of the marriage.

HISTORY: Laws, 2020, ch. 406, § 24, eff from and after July 1, 2020.

§ 91-29-11. Liability of certain purchasers or recipients of certain payments, benefits, or property.

A bona fide purchaser of property from a divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual or a person who receives from the former spouse or any relative of the former spouse who is not a relative of the divorced individual a payment, benefit, or property in partial or full satisfaction of an enforceable obligation:

(1) Is not required by this chapter to return the payment, benefit, or property; and

(2) Is not liable under this chapter for the amount of the payment or the value of the property or benefit.

HISTORY: Laws, 2020, ch. 406, § 25, eff from and after July 1, 2020.

§ 91-29-13. Liability of former spouse for certain payments, benefits or property.

A divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual who, not for value, receives a payment, benefit, or property to which the former spouse or the relative of the former spouse who is not a relative of the divorced individual is not entitled as a result of Sections 91-29-7 (a) and (b):

(1) Shall return the payment, benefit, or property to the person who is entitled to the payment, benefit, or property under this chapter; or

(2) Is personally liable to the person described by paragraph (1) for the amount of the payment or the value of the benefit or property received, as applicable.

HISTORY: Laws, 2020, ch. 406, § 26, eff from and after July 1, 2020.

§ 91-29-15. Certain trusts with divorced individuals as joint settlors.

(a) This section applies only to a trust created under a trust instrument that:

(1) Was executed by two (2) married individuals as settlors whose marriage to each other is subsequently dissolved; and

(2) Includes a provision described by Section 91-29-7(a).

(b) On the death of one (1) of the divorced individuals who is a settlor of a trust to which this section applies, the trustee shall divide the trust into two (2) trusts, each of which shall be composed of the property attributable to the contributions of only one (1) of the divorced individuals.

(c) An action authorized in a trust instrument described by subsection (a) that requires the actions of both divorced individuals may be taken with respect to a trust established in accordance with subsection (b) from the surviving divorced individual's contributions solely by that divorced individual.

(d) The provisions of this chapter apply independently to each trust established in accordance with subsection (b) as if the divorced individual from whose contributions the trust was established had been the only settlor to execute the trust instrument described by subsection (a).

(e) This section does not apply if one (1) of the following provides otherwise:

(1) A court order;

(2) The express terms of a trust instrument executed by the two (2) divorced individuals before their marriage was dissolved; or

(3) An express provision of a contract relating to the division of the marital estate entered into between the two (2) divorced individuals before, during, or after their marriage.

HISTORY: Laws, 2020, ch. 406, § 27, eff from and after July 1, 2020.

§ 91-29-17. Designation of former spouse or relative of former spouse on certain multiple-party accounts.

(a) In this section:

(1) "Beneficiary," "multiple-party account, "party," "P.O.D. account," "P.O.D. payee," "T.O.D. account," and T.O.D. payee" have the meanings assigned in Title 91, Chapter 21, Mississippi Code of 1972.

(2) "Public retirement system" has the meaning assigned by Section 25-11-101.

(b) If a decedent established a P.O.D. account, T.O.D. account, or other multiple-party account and the decedent's marriage was later dissolved by divorce, annulment, or a declaration that the marriage is void, any payable on request after death designation provision with respect to that account in favor of the decedent's former spouse or a relative of the former spouse who is not a relative of the decedent is not effective as to that spouse or relative unless:

(1) The court decree dissolving the marriage designates the former spouse or the former spouse's relative as the P.O.D. payee, T.O.D. payee, or beneficiary; or

(2) After the marriage was dissolved, the decedent redesignated the former spouse or the former spouse's relative as the P.O.D. payee, T.O.D. payee, or beneficiary; or

(3) The former spouse or the former spouse's relative is designated to receive the proceeds or benefits in trust for, on behalf of, or for the benefit of a child or dependent of either the decedent or the former spouse.

(c) If a designation is not effective under subsection (b), a multiple-party account is payable to the named alternative P.O.D. payee, T.O.D. payee, or beneficiary or, if an alternative P.O.D. payee, T.O.D. payee, or beneficiary is not named, to the estate of the decedent.

(d) A financial institution or other person obligated to pay an account described by subsection (b) that pays the account to the former spouse or the former spouse's relative as P.O.D. payee, T.O.D. payee, or beneficiary under a designation that is not effective under subsection (b) is liable for payment of the account to the person provided by subsection (c) only if:

(1) Before payment of the account to the designated P.O.D. payee, T.O.D. payee, or beneficiary, the payor receives written notice at the home office or principal office of the payor from an interested person that the designation of the P.O.D. payee, T.O.D. payee, or beneficiary is not effective under subsection (b); and

(2) The payor has not interpleaded the account funds into the registry of a court of competent jurisdiction in accordance with the Mississippi Rules of Civil Procedure.

(e) This section does not affect the right of a former spouse to assert an ownership interest in an undivided multiple-party account described by subsection (b).

(f) This section does not apply to the disposition of a beneficial interest in a retirement benefit or other financial plan of a public retirement system.

HISTORY: Laws, 2020, ch. 406, § 28, eff from and after July 1, 2020.

§ 91-29-19. Determination of consanguinity.

(a) Two (2) individuals are related to each other by consanguinity if:

(1) One (1) is a descendant of the other; or

(2) They share a common ancestor.

(b) An adopted child is considered to be a child of the adoptive parent for this purpose.

HISTORY: Laws, 2020, ch. 406, § 29, eff from and after July 1, 2020.

§ 91-29-23. Pre-decree designation of ex-spouse as beneficiary of life insurance.

(a) If a decree of divorce or annulment is rendered after an insured has designated the insured's spouse as a beneficiary under a life insurance policy in force at the time of rendition, a provision in the policy in favor of the insured's former spouse is not effective unless:

(1) The decree designates the insured's former spouse as the beneficiary;

(2) The insured redesignates the former spouse as the beneficiary after rendition of the decree; or

(3) The former spouse is designated to receive the proceeds in trust for, on behalf of, or for the benefit of a child or a dependent of either former spouse.

(b) If a designation is not effective under subsection (a), the proceeds of the policy are payable to the named alternative beneficiary or, if there is not a named alternative beneficiary, to the estate of the insured.

(c) An insurer who pays the proceeds of a life insurance policy issued by the insurer to the beneficiary under a designation that is not effective under subsection (a) is liable for payment of the proceeds to the person or estate provided by subsection (b) only if:

(1) Before payment of the proceeds to the designated beneficiary, the insurer receives written notice at the home office of the insurer from an interested person that the designation is not effective under subsection (a); and

(2) The insurer has not interpleaded the proceeds into the registry of a court of competent jurisdiction in accordance with the Mississippi Rules of Civil Procedure.

HISTORY: Laws, 2020, ch. 406, § 31, eff from and after July 1, 2020.

§ 91-29-25. Pre-decree designation of ex-spouse as beneficiary in retirement benefits and other financial plans.

(a) If a decree of divorce or annulment is rendered after a spouse, acting in the capacity of a participant, annuitant, or account holder, has designated the other spouse as a beneficiary under an individual retirement account, employee stock option plan, stock option, or other form of savings, bonus, profit-sharing, or other employer plan or financial plan of an employee or a participant in force at the time of rendition, the designating provision in the plan in favor of the other former spouse is not effective unless:

(1) The decree designates the other former spouse as the beneficiary;

(2) The designating former spouse redesignates the other former spouse as the beneficiary after rendition of the decree; or

(3) The other former spouse is designated to receive the proceeds or benefits in trust for, on behalf of, or for the benefit of a child or dependent of either former spouse.

(b) If a designation is not effective under subsection (a), the benefits or proceeds are payable to the named alternative beneficiary or, if there is not a named alternative beneficiary, to the designating former spouse.

(c) A business entity, employer, pension trust, insurer, financial institution, or other person obligated to pay retirement benefits or proceeds of a financial plan covered by this section who pays the benefits or proceeds to the beneficiary under a designation of the other former spouse that is not effective under subsection (a) is liable for payment of the benefits or proceeds to the person provided by subsection (b) only if:

(1) Before payment of the benefits or proceeds to the designated beneficiary, the payor receives written notice at the home office or principal office of the payor from an interested person that the designation of the beneficiary or fiduciary is not effective under subsection (a); and

(2) The payor has not interpleaded the benefits or proceeds into the registry of a court of competent jurisdiction in accordance with the Mississippi Rules of Civil Procedure.

(d) This section does not affect the right of a former spouse to assert an ownership interest in an undivided pension, retirement, annuity, or other financial plan described by this section as provided by this chapter.

(e) This section does not apply to the disposition of a beneficial interest in a retirement benefit or other financial plan of a public retirement system as defined by Section 25-11-101 et seq.

HISTORY: Laws, 2020, ch. 406, § 32, eff from and after July 1, 2020.

§ 91-29-29. Determination of affinity.

(a) Two (2) individuals are related to each other by affinity if:

(1) They are married to each other; or

(2) The spouse of one (1) of the individuals is related by consanguinity to the other individual.

(b) The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage.

HISTORY: Laws, 2020, ch. 406, § 30, eff from and after July 1, 2020.

CHAPTER 31.

UNIFORM PARTITION OF HEIR PROPERTY.

Sec.
91-31-1. Short title.
91-31-3. Definitions.
91-31-5. Applicability; relation to other law.
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91-31-15. Partition alternatives.
91-31-17. Considerations for partition in kind.
91-31-19. Open-market sale, sealed bids or auction.
91-31-21. Report of open-market sale.
91-31-23. Uniformity of application and construction.
91-31-25. Relation to electronic signatures in global and national commerce act.

§ 91-31-1. Short title.

This chapter may be cited as the Uniform Partition of Heir Property Act.

HISTORY: Laws, 2020, ch. 433, § 1, eff from and after July 1, 2020.

§ 91-31-3. Definitions.

In this chapter:

(1) "Ascendant" means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual.

(2) "Collateral" means an individual who is related to another individual under the law of intestate succession of this state but who is not the other individual's ascendant or descendant.

(3) "Descendant" means an individual who follows another individual in lineage, in the direct line of descent from the other individual.

(4) "Determination of value" means a court order determining the fair market value of heir property under Section 91-31-11 or 91-31-19 or adopting the valuation of the property agreed to by all cotenants.

(5) "Heir property" means real property held in tenancy in common which satisfies all of the following requirements as of the filing of a partition action:

(A) There is no agreement in a record binding all the cotenants which governs the partition of the property;

(B) One or more of the cotenants acquired title from a relative, whether living or deceased; and

(C) Any of the following applies:

(i) Twenty percent (20%) or more of the interests are held by cotenants who are relatives;

(ii) Twenty percent (20%) or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or

(iii) Twenty percent (20%) or more of the cotenants are relatives.

(6) "Partition by sale" means a court-ordered sale of the entire heir property, whether by auction, sealed bids, or open-market sale conducted under Section 91-31-19.

(7) "Partition in kind" means the division of heir property into physically distinct and separately titled parcels.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "Relative" means an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or law of this state other than this chapter.

HISTORY: Laws, 2020, ch. 433, § 2, eff from and after July 1, 2020.

§ 91-31-5. Applicability; relation to other law.

Applicability; relation to other law.

(a) This chapter applies to partition actions filed on or after July 1, 2020.

(b) In an action to partition real property under Title 11, Chapter 21, Mississippi Code of 1972, the court shall determine whether the property is heir property. If the court determines that the property is heir property, the property must be partitioned under this chapter unless all of the cotenants otherwise agree in a record.

(c) This chapter supplements Title 11, Chapter 21, Mississippi Code of 1972, and, if an action is governed by this chapter, replaces provisions that are inconsistent with this chapter.

HISTORY: Laws, 2020, ch. 433, § 3, eff from and after July 1, 2020.

§ 91-31-7. Service; notice by posting.

(a) This chapter does not limit or affect the method by which service of a complaint in a partition action may be made.

(b) If the plaintiff in a partition action seeks an order of notice by publication and the court determines that the property may be heir property, the plaintiff, not later than ten (10) days after the court's determination, shall post and maintain while the action is pending a conspicuous sign on the property that is the subject of the action. The sign must state that the action has commenced and identify the name and address of the court and the common designation by which the property is known. The court may require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

HISTORY: Laws, 2020, ch. 433, § 4, eff from and after July 1, 2020.

§ 91-31-9. Masters.

If the court appoints masters under Section 11-21-15, each master, in addition to the requirements and disqualifications applicable to masters in Title 11, Chapter 21, Mississippi Code of 1972, must be disinterested and impartial and not a party to or a participant in the action.

HISTORY: Laws, 2020, ch. 433, § 5, eff from and after July 1, 2020.

§ 91-31-11. Determination of value.

(a) Except as otherwise provided in subsections (b) and (c), if the court determines that the property that is the subject of a partition action is heir property, the court shall determine the fair market value of the property by ordering an appraisal pursuant to subsection (d).

(b) If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt that value or the value produced by the agreed method of valuation.

(c) If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and send notice to the parties of the value.

(d) If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed in this state to determine the fair market value of the property assuming sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

(e) If an appraisal is conducted pursuant to subsection (d), not later than ten (10) days after the appraisal is filed, the court shall send notice to each party with a known address, stating:

(1) The appraised fair market value of the property;

(2) That the appraisal is available at the clerk's office; and

(3) That a party may file with the court an objection to the appraisal not later than thirty (30) days after the notice is sent, stating the grounds for the objection.

(f) If an appraisal is filed with the court pursuant to subsection (d), the court shall conduct a hearing to determine the fair market value of the property not sooner than thirty (30) days after a copy of the notice of the appraisal is sent to each party under subsection (e), whether or not an objection to the appraisal is filed under subsection (e)(3). In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party.

(g) After a hearing under subsection (f), but before considering the merits of the partition action, the court shall determine the fair market value of the property and send notice to the parties of the value.

HISTORY: Laws, 2020, ch. 433, § 6, eff from and after July 1, 2020.

§ 91-31-13. Cotenant buyout.

(a) If any cotenant requested partition by sale, after the determination of value under Section 91-31-11, the court shall send notice to the parties that any cotenant except a cotenant that requested partition by sale may buy all the interests of the cotenants that requested partition by sale.

(b) Not later than forty-five (45) days after the notice is sent under subsection (a), any cotenant except a cotenant that requested partition by sale may give notice to the court that it elects to buy all the interests of the cotenants that requested partition by sale.

(c) The purchase price for each of the interests of a cotenant that requested partition by sale is the value of the entire parcel determined under Section 91-31-11 multiplied by the cotenant's fractional ownership of the entire parcel.

(d) After expiration of the period in subsection (b), the following rules apply:

(1) If only one (1) cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify all the parties of that fact.

(2) If more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall allocate the right to buy those interests among the electing cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy and send notice to all the parties of that fact and of the price to be paid by each electing cotenant.

(3) If no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall send notice to all the parties of that fact and resolve the partition action under Section 91-31-15(a) and (b).

(e) If the court sends notice to the parties under subsection (d)(1) or (2), the court shall set a date, not sooner than sixty (60) days after the date the notice was sent, by which electing cotenants must pay their apportioned price into the court. After this date, the following rules apply:

(1) If all electing cotenants timely pay their apportioned price into court, the court shall issue an order reallocating all the interests of the cotenants and disburse the amounts held by the court to the persons entitled to them.

(2) If no electing cotenant timely pays its apportioned price, the court shall resolve the partition action under Section 91-31-15(a) and (b) as if the interests of the cotenants that requested partition by sale were not purchased.

(3) If one or more but not all of the electing cotenants fail to pay their apportioned price on time, the court, on motion, shall give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all that interest.

(f) Not later than twenty (20) days after the court gives notice pursuant to subsection (e)(3), any cotenant that paid may elect to purchase all of the remaining interest by paying the entire price into the court. After the twenty-day period, the following rules apply:

(1) If only one (1) cotenant pays the entire price for the remaining interest, the court shall issue an order reallocating the remaining interest to that cotenant. The court shall issue promptly an order reallocating the interests of all of the cotenants and disburse the amounts held by it to the persons entitled to them.

(2) If no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under Section 91-31-15(a) and (b) as if the interests of the cotenants that requested partition by sale were not purchased.

(3) If more than one (1) cotenant pays the entire price for the remaining interest, the court shall reapportion the remaining interest among those paying cotenants, based on each paying cotenant's original fractional ownership of the entire parcel divided by the total original fractional ownership of all cotenants that paid the entire price for the remaining interest. The court shall issue promptly an order reallocating all of the cotenants' interests, disburse the amounts held by it to the persons entitled to them, and promptly refund any excess payment held by the court.

(g) Not later than forty-five (45) days after the court sends notice to the parties pursuant to subsection (a), any cotenant entitled to buy an interest under this section may request the court to authorize the sale as part of the pending action of the interests of cotenants named as defendants and served with the complaint but that did not appear in the action.

(h) If the court receives a timely request under subsection (g), the court, after hearing, may deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable, subject to the following limitations:

(1) A sale authorized under this subsection may occur only after the purchase prices for all interests subject to sale under subsections (a) through (f) have been paid into court and those interests have been reallocated among the cotenants as provided in those subsections; and

(2) The purchase price for the interest of a nonappearing cotenant is based on the court's determination of value under Section 91-31-11.

HISTORY: Laws, 2020, ch. 433, § 7, eff from and after July 1, 2020.

§ 91-31-15. Partition alternatives.

(a) If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to Section 91-31-13, or if after conclusion of the buyout under Section 91-31-13, a cotenant remains that has requested partition in kind, the court shall order partition in kind unless the court, after consideration of the factors listed in Section 91-31-17, finds that partition in kind will result in manifest prejudice to the cotenants as a group. In considering whether to order partition in kind, the court shall approve a request by two (2) or more parties to have their individual interests aggregated.

(b) If the court does not order partition in kind under subsection (a), the court shall order partition by sale pursuant to Section 91-31-19 or, if no cotenant requested partition by sale, the court shall dismiss the action.

(c) If the court orders partition in kind pursuant to subsection (a), the court may require that one or more cotenants pay one or more other cotenants amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind just and proportionate in value to the fractional interests held.

(d) If the court orders partition in kind, the court shall allocate to the cotenants that are unknown, unlocatable, or the subject of a default judgment, if their interests were not bought out pursuant to Section 91-31-13, a part of the property representing the combined interests of these cotenants as determined by the court and this part of the property shall remain undivided.

HISTORY: Laws, 2020, ch. 433, § 8, eff from and after July 1, 2020.

§ 91-31-17. Considerations for partition in kind.

(a) In determining under Section 91-31-15(a) whether partition in kind would result in manifest prejudice to the cotenants as a group, the court shall consider the following:

(1) Whether the heir property practicably can be divided among the cotenants;

(2) Whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole, taking into account the condition under which a court-ordered sale likely would occur;

(3) Evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are or were relatives of the cotenant or each other;

(4) A cotenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant;

(5) The lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property;

(6) The degree to which the cotenants have contributed their pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance, or upkeep of the property; and

(7) Any other relevant factor.

(b) The court may not consider any one (1) factor in subsection (a) to be dispositive without weighing the totality of all relevant factors and circumstances.

HISTORY: Laws, 2020, ch. 433, § 9, eff from and after July 1, 2020.

§ 91-31-19. Open-market sale, sealed bids or auction.

(a) If the court orders a sale of heir property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or an auction would be more economically advantageous and in the best interest of the cotenants as a group.

(b) If the court orders an open-market sale and the parties, not later than ten (10) days after the entry of the order, agree on a real estate broker licensed in this state to offer the property for sale, the court shall appoint the broker and establish a reasonable commission. If the parties do not agree on a broker, the court shall appoint a disinterested real estate broker licensed in this state to offer the property for sale and shall establish a reasonable commission. The broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court.

(c) If the broker appointed under subsection (b) obtains within a reasonable time an offer to purchase the property for at least the determination of value:

(1) The broker shall comply with the reporting requirements in Section 91-31-21; and

(2) The sale may be completed in accordance with state law other than this chapter.

(d) If the broker appointed under subsection (b) does not obtain within a reasonable time an offer to purchase the property for at least the determination of value, the court, after hearing, may:

(1) Approve the highest outstanding offer, if any;

(2) Redetermine the value of the property and order that the property continue to be offered for an additional time; or

(3) Order that the property be sold by sealed bids or at an auction.

(e) If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the sale. If the court orders an auction, the auction must be conducted under Section 11-21-27.

(f) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

HISTORY: Laws, 2020, ch. 433, § 10, eff from and after July 1, 2020.

§ 91-31-21. Report of open-market sale.

(a) Unless required to do so within a shorter time by Title 11, Chapter 21, Mississippi Code of 1972, a broker appointed under Section 91-31-19(b) to offer heir property for open-market sale shall file a report with the court not later than seven (7) days after receiving an offer to purchase the property for at least the value determined under Section 91-31-11 or 91-31-19.

(b) The report required by subsection (a) must contain the following information:

(1) A description of the property to be sold to each buyer;

(2) The name of each buyer;

(3) The proposed purchase price;

(4) The terms and conditions of the proposed sale, including the terms of any owner financing;

(5) The amounts to be paid to lienholders;

(6) A statement of contractual or other arrangements or conditions of the broker's commission; and

(7) Other material facts relevant to the sale.

HISTORY: Laws, 2020, ch. 433, § 11, eff from and after July 1, 2020.

§ 91-31-23. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

HISTORY: Laws, 2020, ch. 433, § 12, eff from and after July 1, 2020.

§ 91-31-25. Relation to electronic signatures in global and national commerce act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 USC Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 USC Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 USC Section 7003(b).

HISTORY: Laws, 2020, ch. 433, § 13, eff from and after July 1, 2020.

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